

REVENUE STABILIZATION AND TAX POLICY COMMITTEE

2008 INTERIM

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REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

2008 Interim

TABLE OF CONTENTS

Section 1	Introduction Annual Summary
Section 2	Work Plan, Schedule
Section 3	June 2008 Agenda Minutes
Section 4	July 2008 Agenda Minutes
Section 5	August 2008 Agenda Minutes
Section 6	September 2008 Agenda Minutes
Section 7	October 2008 Agenda Minutes (Not Available)
Section 8	November 2008 Agenda Minutes
Section 9	December 2008 Agenda Minutes
Section 10	Legislative Proposal Chart Endorsed Legislative Proposals

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 1

2008 INTERIM
Annual Report and Summary

Revenue Stabilization and Tax Policy Committee
Representative Edward C. Sandoval, Chair
Senator Carlos R. Cisneros, Vice Chair

SUMMARY OF WORK COMPLETED
2008 Interim

The Revenue Stabilization and Tax Policy Committee held seven meetings in 2008. The committee continued to discuss property tax and reviewed several pieces of legislation regarding disclosure of projected taxes of a buyer upon transfer of real property, yield control formula changes and possible suggestions for changing the three percent limit on valuations. The committee chose not to endorse legislation that had an immediate negative fiscal impact due to the apparent downturn in the economy. Except for a graduated gaming tax for smaller gaming operators, which would decrease gaming tax revenue from the smallest or possibly newest horse racetracks with gaming machines, tax reductions or other tax expenditures were not endorsed by the committee.

Of the Taxation and Revenue Department (TRD) bills, eight received endorsements. Of the Motor Vehicle Division (MVD) bills, three received endorsements. The MVD is planning on reorganization of the Motor Vehicle Code, but will not present that until 2010. One of the MVD bills deals with commercial driver's licenses and reverses some of the language enacted from two sessions ago because the language affected more vehicles and licensed drivers than anticipated. Also endorsed were bills allowing electronic participation in DWI implied consent hearings and a requirement that a driver turning 21 must get a new license. TRD-endorsed bills include the personal income tax simplification bill, in which low- and middle-income exemptions and deductions are included in tables for ease of access for taxpayers, with automatic indexing beginning when the economy picks up again. Also endorsed was a bill providing electronic payment of gross receipts taxes for businesses owing liabilities of more than \$10,000 per month. A reorganization of the entities that may receive taxpayer information as exceptions to the confidentiality rules applying to taxpayer information was endorsed. This will make those who may receive this information easier to locate in the law. Another endorsed bill corrects an error made several years ago when quarterly estimated corporate income tax reporting periods were erroneously reduced from four to three reports per year. This change will shift payments of corporate income tax so that about \$60 million comes into the state earlier than it would under current law. The bill will also extend withholding payments to state residents with oil and gas royalty interests. Film companies that manage and pass through payments to actors, etc., will be asked to withhold estimated taxes from actors' income. Some technical changes to the Tax Increment Financing Act identified by the TRD were endorsed. Cigarette tax enforcement, limiting the finder's fees on persons who match unclaimed property with the property's owners and some cleanup of the Taxation and Revenue Department Act also were endorsed. One TRD bill that failed to be endorsed would have corrected an error in the food and medical tax hold-harmless provisions that have been providing Albuquerque and Bernalillo County with windfalls of a few extra million dollars each year. When the hold harmless provisions were first drafted, it was not anticipated that a municipality or county would reduce or eliminate a gross receipts tax increment that it had imposed. Albuquerque actually did eliminate an increment of one of its

local option gross receipts taxes but still receives hold harmless as if the increment were still imposed.

Other endorsed bills were the extensions until 2013 of the life of the Research and Development Small Business Tax Credit Act and until 2020 for the Investment Credit Act and the double-weighted factors in the formula for apportionment of business income.

Changes to the Gaming Control Act, including a definition of "cheating" and self-exclusion provisions, were endorsed, as was a reorganization of the Bingo and Raffle Act into the New Mexico Bingo and Raffle Act. A memorial requesting that nonviolent first offenders, who have as the basis of their offense a gambling addiction, be put into a preprosecution diversion program rather than sentenced to serve time. Also endorsed were changes to the Municipal Environmental Services Gross Receipts Tax Act to allow more taxing authority for solid waste and wastewater facilities; a bill changing the rate of taxation on flavored malt beverages, or "alcopops", from the rate of liquor excise tax on beer to the rate of that tax on spirits; a proposal to establish a permit system for direct shipments of wine; a provision to allow a county health care gross receipts tax to be reimposed; and a provision allowing Bernalillo County to impose the county correctional facility local gross receipts tax.

Altogether, the Revenue Stabilization and Tax Policy Committee endorsed 23 bills and rejected an equal number for endorsement this year. There were no endorsed bills on the issue of resolving the property tax inequities that have come to the committee's attention that occur between new residential home purchasers and homeowners who have remained in their homes for several years. There were some disclosure bills, which were not endorsed but will be presented to the legislature this year, that would require county assessors, sellers, realtors or title insurers to make certain that a buyer has been informed about the potential increase in property taxes that will be experienced in the second year of new home ownership.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 2

2008 INTERIM
Work Plan
Schedule

**2008 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

Members

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray

Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubescic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville

Rep. Andy Nuñez
Rep. John Pena
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

Approved Work Plan and Focus for 2008

The revenue stabilization and tax policy committee is a statutorily created joint interim legislative committee. Pursuant to Section 2-16-3 NMSA 1978, the committee is directed to "examine the statutes, constitutional provisions, regulations and court decisions governing revenue stabilization and tax policy in New Mexico and recommend legislation or changes if any are found to be necessary . . .".

A. In the 2008 interim, the committee will:

1. examine the property tax, especially the details and interrelationship of yield control and the limitations on property tax, causes of large increases in property tax in certain counties, the effects of tax increment financing on property tax revenue and the extent of use and effect of the use of industrial revenue bonds;

2. review historic levels of expenditures for each county, rate changes and trends in each county, including identifying the last year in which a full county reassessment was completed and identifying the percent of each county's budget representing operational mill levies; examine the money received from the public school funding formula for schools in counties where values

are underassessed and determine the effect on funding formula distributions to the school districts in those counties;

3. continue to examine the effectiveness of tax credits and their resulting impact on revenue;

4. conduct a detailed review of each major revenue-generating tax and its respective current and future contribution to overall revenue of the state;

5. revisit the consolidation proposal for low- and middle-income tax credits, deductions, exemptions and other tax benefits to reduce the complexity of personal income tax returns;

6. conduct a detailed review of the tax increment financing law to determine if amendments are necessary to accomplish the state's goals for which the districts were created, including assessing whether an expansion of the law to include existing businesses is feasible;

7. examine issues related to the severance tax permanent fund, including revenue trends and distribution trends to the general fund; and

8. review concepts and proposed legislation that will provide full disclosure of probable property tax rates to owners of newly transferred property.

B. Other matters that will be addressed by the committee include:

1. receiving revenue projections and examining any anticipated or observed trends occurring in the revenue outlook for the upcoming year, including reviewing the revenue outlook for the state road fund and other funding mechanisms for roadway and transportation expansion and maintenance;

2. a review of legislative proposals to be introduced in the 2009 legislative session by the taxation and revenue department;

3. periodic updates on the progress of implementation of recently adopted tax legislation;

4. an update on the national effort to streamline sales taxes and sales tax policy;

5. a review of the racing facilities of race tracks to determine sufficiency of facilities for continued improvement of the New Mexico horse racing industry; examine the status of the state fair racing meets and facilities after separation of the Downs at Albuquerque from the state fair grounds;

6. a discussion of state plans or an examination of concepts to provide mass transit in the state, with special emphasis on mass transit provision in rural areas and funding mechanisms to provide mass transit other than the rail runner;

7. review the number and purpose of quasi-governmental entities that have been authorized to levy taxes and determine the rate, amount and type of taxes imposed and whether those authorities are or should be subject to yield control;

8. examine what revenues are used to support local government budgets, what can be done to broaden the revenue base for local governments and whether local government revenues adequately cover the costs of burdens placed upon them by the state or due to federal mandates and weigh the impact of redirecting any additional amount of the state revenue base to local governments against the loss to the state of those revenues;

9. continue to examine regulatory reform, and review Senate Memorial 53 on administrative process and regulatory reform;

10. review special methods of evaluating property taxes for various industries, such as power plants or railroads; and

11. review fuel taxes for farm use and determine whether taxes should remain in place or whether they impose too great a burden on agricultural producers due to the increased fuel prices.

APPROVED MEETING SCHEDULE

The dates on which the revenue stabilization and tax policy committee proposes to meet are:

<u>Date</u>	<u>Location</u>
June 05 (Th)	Santa Fe, State Capitol, Room 322
July 02-03 (W-Th)	Taos
August 20-21 (W-Th)	Ruidoso
September 10-12 (W-Fr)	Farmington
October 16-17 (Th-Fr)	Albuquerque
November 06-07 (Th-Fr)	Santa Fe
December 15-16 (M-Tu)	Santa Fe

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 3

June 2008
Agenda
Minutes

Revised: June 3, 2008

**TENTATIVE AGENDA
for the
FIRST MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**June 5, 2008
State Capitol, Room 322**

Thursday, June 5

- 9:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Review of Committee Protocol**
—Paula Tackett, Director, Legislative Council Service (LCS)
- 9:30 a.m. **Post-Session Fiscal Summary**
—David Abbey, Director, Legislative Finance Committee (LFC)
—Norton Francis, Economist, LFC
- 10:30 a.m. **Introduction to Yield Control**
—Tom Clifford, Research Director, New Mexico Tax Research Institute
—Al Maury, Chief Economist, Tax Research Bureau, Taxation and
Revenue Department (TRD)
- 11:45 a.m. **Adoption of Committee Work Plan and Meeting
Schedule**
—Pam Ray, Staff Attorney, LCS
- 12:30 p.m. **Working Lunch**
- 1:15 p.m. **2008 and Recently Implemented Tax Legislation**
—Rick Homans, Secretary, TRD
—Jim Nunns, Tax Policy Director, TRD
- 2:00 p.m. **Bernalillo County Property Tax Rate Composition**
—Karen Montoya, Assessor, Bernalillo County
—Rick Silva, Director, Property Tax Division (PTD), TRD
—Mitch Bonney, Bureau Chief, State Assessed Properties Bureau, PTD,
TRD
—Robert Apodaca, Director, Local Government Division (LGD),
Department of Finance and Administration (DFA)
—John Gallegos, Chief, Budget and Finance Bureau (BFB), LGD, DFA

—Isaac Montoya, Executive Analyst, BFB, LGD, DFA
—Susan Rodriguez, Executive Analyst, BFB, LGD, DFA
—Patrick Padilla, Treasurer, Bernalillo County

3:45 p.m.

Adjourn

**MINUTES
of the
FIRST MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**June 5, 2008
Room 322, State Capitol
Santa Fe**

The first meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Representative Edward C. Sandoval, chair, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Sen. Timothy Z. Jennings
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Sen. John Arthur Smith

Sen. Kent L. Cravens
Rep. William J. Gray
Rep. George J. Hanosh
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Phil A. Griego*
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. John T.L. Grubesic
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. John Pena
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. William E. Sharer
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

* Permission to attend granted

Absent

Staff

Pam Ray
Tim Crawford
Doris Faust
Cleo Griffith
Doug Williams

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, June 5**Interim Committee Protocol**

Paula Tackett, director, Legislative Council Service (LCS), presented basic protocol for interim committees. She discussed quorums and the ways in which, and purposes for which, quorums are counted, voting privileges, taking official committee action with or without quorums and the ability of a single house to block adoption of committee motions. She reminded members that a majority of committee members of both houses must vote for a proposal or it will fail. Failure of a proposal to obtain a majority of votes of the committee members of either house will "block" the proposal from approval. The number of positive votes from each house must equal at least a majority of the committee members appointed to the committee. This means that if there are no members, or fewer than a majority of the committee members, from one house present, no official action may be taken by the committee unless the action is taken by consensus or without objection and no one challenges the quorum.

She also reminded members that they should close their laptops when speaking into the microphones because the microphones are voice-activated and require a direct line of sound without impediment to operate correctly.

Introductions

The chair asked that committee members introduce themselves and that staff be introduced by Ms. Ray, staff attorney, LCS.

Post-Session Fiscal Update

David Abbey, director, Legislative Finance Committee (LFC), and Norton Francis, chief economist, LFC, presented the post-session fiscal update.

Mr. Abbey spoke about the efficiency with which House Bill 2 was presented to the governor and signed during the 2008 legislative session. The general fund budget revenues enacted for FY09 were \$6.035 billion. This is a 6.3 percent increase over the FY08 general fund operating budget expenditures. He noted that the change to accrual accounting was still presenting occasional issues with the budget. For FY09, the general fund budget expenditure

growth declined as a share of New Mexico personal income to under eight percent, the lowest expenditure rate of expenditure growth as a percent of personal income in a decade.

General fund reserves remain strong at 10.3 percent of recurring general fund appropriations for FY09. This high level of reserves reflects the concern of both the legislature and the executive regarding the volatility of the energy revenues and a slowing economy.

The economy, Mr. Abbey noted, has taken a dramatic downward turn since the consensus revenue estimate in December 2007. Many national economists have concluded that the country is in a recession, although Global Insight, one of the economic forecasting groups relied on by the state, believes that if the nation is in a recession, it will be short and shallow, with growth returning to three percent in FY10.

Nonrecurring general fund revenues in the General Appropriation Act of 2008 totals approximately \$147.6 million. Senate Bill 471 (Chapter 92) appropriates \$123 million of the general fund revenue for capital outlay projects. Reserves are approximately \$623.5 million, or 10.3 percent.

Of new recurring funds, public schools absorb the greatest percent, at 43.3 percent. New Medicaid funding totals 23 percent of the new recurring funds available.

Prison population is decreasing as Clayton will see its new corrections facility opening. The system has 600 unfilled beds currently, and the new capacity will be difficult to fill. Although the legislature appropriated an additional \$4 million to reduce the waiting list for the developmentally disabled, Mr. Abbey projected it will take 25 years at that rate to eliminate the waiting list.

Mr. Francis gave an economic update. Although the revenues from oil and gas are projected to increase, gross receipts taxes from general sales, selective excise taxes, corporate income taxes, license fees, rents and royalties and other miscellaneous receipts are showing decreases. Energy revenue will continue to offset the decreases in these broad-based taxes that rise and fall with the economy. The high fuel prices have no effect on revenue from the fuel taxes except that, at some point as the price inflates, the volume of fuel sold will decrease. Fuel taxes are based on volume distributed and are not a percent of the price. He noted that employment has fallen below two percent growth to a low of less than one percent growth in May 2008. Personal income is falling and was lower in May 2008 than in November 2007. The next consensus group revenue estimates will be presented at the August meeting in Ruidoso.

Committee discussion included concerns about substantial losses that have been experienced by investments of the State Investment Council, the Educational Retirement Board, the Public Employees Retirement Association and the Retiree Health Care Authority. Gaming revenues for FY07 did not increase at the rate anticipated, and there has been no decrease in lottery revenue.

Introduction to Yield Control

Tom Clifford, research director, New Mexico Tax Research Institute, and Al Maury, Chief economist, Taxation and Revenue Department (TRD), together presented to the committee a basic introduction to yield control.

Mr. Clifford began with general facts about property taxes. He discussed recent trends in tax values and obligations, the tax policy criteria relevant to evaluating property taxes and current policy issues with the property tax in New Mexico. A handout is in the committee file.

Property tax generates about \$1.3 billion in revenue annually. The taxable property base is approximately \$47 billion. Taxable value is one-third of the valuation of a property less the exemptions that may be applied to the value. Fifty-six percent of the tax base is residential property, 30 percent is nonresidential property and 14 percent is oil and gas or copper mineral property. Property tax rates, assessed in mills (one dollar per \$1,000 of taxable value), are not uniform throughout the state and vary from a low of 10 mills to a high of 45 mills. The average mill levy in New Mexico is around 27 mills, or about 0.9 percent of market value. Approximately one-third of property tax revenue goes to the public schools, generally for capital outlay purposes. One-fourth of the property tax revenue goes to counties for operating expenditures. One-sixth goes to municipalities, mainly for operating expenditures. The University of New Mexico Hospital, other hospitals and higher education receive about one-tenth of the property tax revenue. General obligation bond issues are repaid with slightly less than one-twentieth of the property tax revenue.

In the 10 years from 1998 to 2007, net taxable values for residential property more than doubled, increasing by 105 percent. The net taxable value of oil and gas property increased by 142 percent. Nonresidential property net taxable values increased by 61 percent. Tax obligations increased 98 percent over that 10-year period, oil and gas taxes increased 162 percent, residential obligations increased 112 percent and nonresidential obligations increased by 65 percent. Tax rates have remained fairly constant over this 10-year period: residential rates increased from 25.9 mills to 26.7 mills; nonresidential rates increased from 28.5 mills to 29.1 mills; and the largest increase of rates in the 10-year period was in oil and gas rates, where the increase was from 20.7 mills to 22.4 mills. On average, these figures indicate that yield control is working fairly well, even with the increased debt and other distortions that are included in determining rates.

Mr. Clifford concluded that residential property values have not kept pace with house price inflation. The three-percent limit on residential property valuations has caused a wedge to develop between properties that are newly purchased and properties that have been held for a long period of time. Valuations for residential property held for longer periods of time are lower than house price inflation. If the value of residential property increases at a slower rate than the inflation factor due to the inclusion of the value maintenance factor that incorporates values held to the three-percent increase limit annually, then the rate of property taxes will increase to cover the needed revenue to keep the revenue at a stable level.

Mr. Maury discussed the way yield control was developed and how it is applied to values. Before 1979, when yield control was first adopted, assessors were hesitant to raise valuations of

property to current and correct values because the increase in valuations would cause an increase in the tax assessment. Yield control was designed to *decrease* property tax *rates* as *values increased*, or vice versa, so that there would not be a windfall to the taxing district because values were simply brought into line with the real-world market by being raised to current and correct values. The theory is that as values increase, rates can decrease to generate a targeted amount of revenue. If values fall, the rates would rise so that district operating funds do not fall short of needs. Not all components of a tax rate are subject to yield control, and factors that distort or depress property values from current and correct values or affect rates without yield control being applied lessen the ability of yield control to reduce rates and maintain slowed growth in rates. Mr. Maury noted that yield control is a formula for restricting revenue yields by changing rates in response to reassessment or valuation maintenance. Revenue yields tend to increase when yield control is applied to values that reflect the rate of inflation in the absence of reassessment, so that when reassessment occurs, the rates have changed over time to approach the new levels.

The yield control formula has the following three significant variables that result in the mill rate to be levied to provide operational revenue: 1) valuation maintenance, which includes changes in assessed value of existing properties due to reassessment; 2) a government cost index that reflects the rate of inflation in the housing market; and 3) new construction, also called net new value.

As the government cost index increases, rates will increase by the same percent up to five percent if all other variables are kept constant. Values of new construction or net new value do not change the resulting rate significantly, but increase the base values in direct proportion to the increase in net new value or new construction; a four-percent increase in new construction would produce a four-percent increase in the previous year's base and also a revenue increase of approximately four-percent. Valuation maintenance is inversely proportional to the percent of the prior year's base that is valuation maintenance for this year, so if homes are reassessed and increase in value by seven percent, that factor will appear in the denominator of the formula and will cause a decrease in rates by dividing other factors by 1/1.07, or 0.93 percent.

In summary:

- yield control has operated to hold down operational mill levies in most counties on rates subject to yield control;
- the impact of yield control has been greater on residential tax obligations than on nonresidential tax obligations;
- lack of data prevents knowledge of exactly how yield control is affected by the three percent valuation limitation; in general, it can be said that yield control would tend to mitigate the increases in revenue that would be seen due to reassessment of property at the time it is transferred, although yield control would have no effect on individual property tax valuation increases due to transfer and reassessment. Yield control would have an effect on the mill rate once all valuations are considered and would tend to

keep the operational mill rate lower as property values increased due to reassessment or rose with the increase in value of up to three percent per year on property not transferred; and

- yield control does not apply to debt service rates.

Committee Work Plan, Schedule and Budget

Ms. Ray presented the proposed work plan, schedule and budget to the committee. Discussion ensued regarding the items on the work plan.) Several more were added at the request of committee members. (See the attached proposed work plan). An additional day was included for the Farmington meeting to accommodate the tours of the BHP long wall underground coal mine and the PNM electric generating plant. All other tours will be incorporated into the meetings, possibly by scheduling them in the afternoon prior to the first day of the meeting. Added items were:

- to review the number and purpose of quasi-governmental entities that have been authorized to levy taxes and determine the rate, amount and type of taxes imposed and whether those authorities are or should be subject to yield control;
- to review regulatory reform and review Senate Memorial 53 on administrative process and regulatory reform;
- to review special methods of evaluating property taxes for various industries, such as power plants or railroads;
- to include in the tax increment development district (TIDD) discussion an examination of the effect of including existing businesses in TIDDs; and
- to examine possibilities for broadening county and municipal tax bases to increase revenues without putting additional burdens on existing taxpayers and review the changing needs of communities due to additional federal mandates.

The committee chose to have its August meeting in Ruidoso. The committee also asked that money be included in the budget for expert testimony on TIDDs and combined reporting of corporate income tax. Ten thousand dollars will be added to the budget for expert testimony.

2008 and Recently Implemented Legislation

Rick Homans, secretary of taxation and revenue, and Jim Nunns, tax policy director, TRD, presented information about the taxation and motor vehicle bills that were adopted in the 2008 legislative session. Also discussed was legislation adopted in previous sessions that is now beginning to be implemented.

The bills adopted in the 2008 legislative session are listed below.

- House Bill 324 contains the charitable care property tax valuation changes. This bill provides an exemption from valuation for property taxation purposes for property operated as a community to which the Continuing Care Act applies, or operated under the regulatory control of the Department of Health. This change will be applicable in the tax year that began January 1, 2008.
- Locomotive fuel tax is exempt from gross receipts and compensating tax beginning on July 1, 2009 if construction on a locomotive refueling facility has begun and is certified by the Economic Development Department, or on July 1, 2010 if the Economic Development Department does not certify that the construction has begun until January 1, 2010.
- House Bill 615 amends the process for distributing county gross receipts tax revenue pursuant to Section 7-1-6.13 NMSA 1978. An additional distribution from revenue is attributable to the second one-eighth increment of the county gross receipts tax imposed by a county to the Sole Community Provider Fund. The new distribution each month is equal to one-twelfth of the amount of the county's approved contribution for support of the sole community provider payments. The provisions became effective on February 28, 2008.
- House Bill 661 amends Subsection B of Section 7-36-15 NMSA 1978 that requires valuation authorities (the TRD or county assessors) to apply generally accepted appraisal techniques when appraising property for property tax purposes. When appraising residential housing, the valuation authority must take into consideration any decrease in value that would be realized by the owner in a federal, state or local affordable housing program.
- Senate Bill 174 extends the time in which the high-wage jobs tax credit may be claimed until July 1, 2015. The Economic Development Department must report to an appropriate interim legislative committee.
- Senate Bill 574 permits the TRD to rectify a problem that exists because the TRD erroneously collected income tax from the military service pay of Native Americans who were domiciled on New Mexico Indian reservations during a period of service in the military. A study will be conducted by the secretary of veterans' services to determine which veterans were affected. The study will identify the survivors of deceased veterans who had taxes erroneously withheld. The secretary of veterans' services will set up the process to return funds overpaid to the taxpayer. Senate Bill 574 went into effect on March 4, 2008.
- Senate Bill 438 puts into effect new weight-distance penalty assessments and a graduated scale of penalties for subsequent offenses. This bill became effective on May 14, 2008.

- House Bill 218 made some corrections to the small counties assistance formula to amend the inflation factor so that it tracks changes better. This bill becomes effective on July 1, 2008.
- Senate Bill 43 increases the maximum production that a winery can have and still be considered a "small winegrower" to 950,000 liters. The liquor excise tax of \$.20 per liter is extended to those small winegrowers producing up to 950,000 liters of wine. The law clarifies the status of wine transferred between wineries for various purposes. These provisions become effective on July 1, 2008.

Motor vehicle legislation also was adopted during the 2008 session. The following describe those bills.

- House Bill 100 provides penalties for tampering with ignition interlock devices. These changes became effective on February 29, 2008.
- Several specialty license plates were adopted during the 2008 legislative session. They include license plates for the City of Las Cruces and breast cancer awareness and specially designed plates for Purple Heart recipients.
- House Bill 215 eliminated waivers for testing for commercial driver's licenses and also removed a subsection from Section 66-8-102 NMSA 1978 that appeared in the law due to adoption of two amendments to that section in 2007. The last bill amending that section was compiled, but it showed the subsection, even though the subsection had been removed by the bill amending the section that was signed first. It was confusing, and the federal government was concerned that the definition of "conviction" in the subsection would still be valid, or at least cause confusion. It was basic cleanup that normally would have occurred in the normal course of amending the section in the future, but was included in House Bill 215 to remove the confusion as quickly as possible. This bill became law on May 14, 2008.
- Senate Bill 551 provides for multiple-trip special permits for agricultural product transport vehicles to allow those vehicles to pass through ports of entry without stopping on each trip, provided that the transported agricultural products were harvested in New Mexico or in a state adjacent to New Mexico. This bill became effective on May 14, 2008.

Other bills became effective after 2008.

- Senate Bill 116 changes the eligibility requirements for limitations on increases in assessed value of property owned by low-income taxpayers who are 65 years of age or older or are disabled. This provision now extends the upper limit of income eligibility to incomes of \$32,000 or less. This will be applicable to property tax years beginning on or after January 1, 2009.

- Senate Bill 164 provides for a distribution from liquor excise tax receipts to Farmington in San Juan County for programs for street inebriates. The distribution should amount to \$20,750 per month. This provision becomes effective on July 1, 2009.
- Senate Bill 177 provides an option to taxpayers to prepay property taxes in 10 monthly installments beginning on June 1 of a tax year and ending on March 1 of the following year. Each monthly payment shall be 10 percent of the tax due to the state based on the prior year's property tax bill, and the last payment shall include the balance due for the year. This provision becomes effective on January 1, 2009.

The general fund revenue impacts of the legislation enacted in 2008 are all positive, but small. The largest impact, occurring in FY10 and totaling \$6 million, is from the effect of the locomotive fuels tax.

Bills adopted in prior years but becoming effective in 2008 are listed below.

- Reduction in the income tax rate to 4.9 percent, the final year of the governor's income tax rate reductions adopted in 2003.
- House Bill 436 from 2007 became effective on January 1, 2008. It amends the penalty and interest provisions of the Tax Administration Act, increasing the minimum penalty for unpaid taxes to \$25.00 from \$10.00, but lowers the interest paid on under- or over-payment of taxes. The maximum penalty for failure to pay a tax or to file a return due to negligence or disregard of TRD rules is increased to 20 percent of the tax due. Other administrative requirements are also included in the bill.
- Senate Bill 463 from 2007 amends the renewable energy production tax credit to allow it to be claimed only by facilities that first produce electricity before January 1, 2018. The law also changes the rate of the credit applied and decreases the credit for the taxpayer beginning in the seventh year of production. The size of the facility that may claim the credit is reduced to facilities producing one megawatt. The maximum amount of electricity that may be certified as eligible for the credit is increased for solar facilities only by an additional 500,000 megawatt hours of solar-generated power. A total of 2.5 million megawatt hours from all power sources can be approved for credits, with the last 500,000 megawatt hours at least being produced from solar energy. This law also became effective on January 1, 2008.
- Senate Bill 463 from 2007 creates corporate or individual income tax credits for agricultural water conservation expenses and sets a sunset date of January 1, 2013.
- Senate Bill 340 from 2007 specifies how properties associated with oil and natural gas transmission are to be assessed for property tax purposes. The law also specifies that a claim of reduced value by the taxpayer due to economic or functional obsolescence

must contain an obsolescence factor and a brief statement of facts supporting the claim.

The TRD also described several other bills that became effective in 2008 that create specialty license plates, and House Bill 1283 establishes a fund that drivers may contribute to at the time of registration that will be used to help save children's eyesight.

The last three items that the TRD discussed were gross receipts tax districts that were created in 2008: Mesa Del Sol created its TIDD; SunCal New Mexico created its Upper Petroglyph TIDD; and the regional spaceport district was created in Dona Ana and Sierra counties. Three water and sanitation districts were created: El Prado Water and Sanitation District in Taos County; El Valle de Los Ranchos Water and Sanitation District in Taos County; and Valley Water and Sanitation District in San Juan County.

It was noted to Kenneth Ortiz, director, Motor Vehicle Division, TRD, that since the registration stickers are no longer color-coded by year of expiration, it is more difficult for law enforcement to determine if a car is properly registered with a cursory glance at the license plate.

Mr. Nunns noted that as special districts levy taxes, they report their progress to the TRD.

Bernalillo County Property Rate Composition

Karen Montoya, Bernalillo County assessor and vice chair of the Assessors Affiliate of the Association of Counties, began the discussion of how property rates are determined by describing how she values property in Bernalillo County. She discussed the complexity of determining the values without the ability to use sales affidavits. The computer-assisted mass appraisal (CAMA) system, a computer software system that helps determine property values, is instrumental in facilitating the valuation process. First, she collects data on parcels in Bernalillo County and identifies the new construction. This data is entered into the CAMA system. Cost tables are created and then use sales affidavit information from residential properties and market trends to adjust the cost tables as needed. The parcel data are used to create an appraised value that represents the market value of the property. She provided the committee with several sections of the Property Tax Code to illustrate her duties. Section 7-36-16 NMSA 1978 deals with responsibilities of county assessors and defines "current and correct" values of property. Section 7-36-21.2 NMSA 1978 discusses limitations on increases in valuation of residential property, providing for the three-percent limit on valuation increases if a residential property is not transferred. She noted that Bernalillo County uses a computer program to review all of the values assigned to residential property to ensure that the increases each year do not exceed the permitted three percent.

Rick Silva, director, Property Tax Division (PTD), TRD, and Mitch Bonney, bureau chief, State Assessed Bureau, PTD, TRD, presented the steps that are taken by the TRD to review the valuations provided by each county assessor. The TRD mainly checks to make certain that none of the values appears to be out of line with the prior-year values. County assessors have a one-month period in which to certify the values from all of the counties. They also must certify the values presented for higher education, public school districts and other special districts with taxing authority.

Robert Apodaca, director, Local Government Division (LGD), Department of Finance and Administration (DFA); John Gallegos, bureau chief, Budget and Finance Bureau (BFB), LGD, DFA; and Isaac Montoya, executive analyst, BFB, LGD, DFA, described in detail how they apply the yield control formula to the certified values they are given by the TRD. They noted that, previously, there was only one staff person who performed the yield control calculations, but thanks to improved budgets, there are six who deal with yield control. In addition, computers have made the job more possible. Mr. Montoya noted that many assessors are still not using computer technology to develop their valuation data, and this causes slow turnaround and inaccuracies. The Department of Information Technology (DOIT) tends to view assessors as revenue generators and not data processing agents. The DOIT has not worked to make the assessors' computers compatible with the TRD or to ensure that all assessors have adequate information technology to complete their valuations accurately. Now, yield control is not the only factor in setting property tax rates. Other factors, such as debt service and special districts that are not subject to yield control, also are added to the yield-controlled millage to create the total millage.

Patrick Padilla, treasurer, Bernalillo County, distributed a sample tax bill sent out by his office. He provided the committee with copies of Section 7-38-37 NMSA 1978, which describe the contents of a property tax bill. Section 7-38-38.3 NMSA 1978, which allows for property taxes to be paid in 10 monthly installments, was also included with Mr. Padilla's handouts.

The committee adjourned at 3:15 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 4

July 2008
Agenda
Minutes

Revised: June 27, 2008

TENTATIVE AGENDA
for the
SECOND MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 2-3, 2008
Sagebrush Inn and Conference Center
1508 Paseo del Pueblo Sur (Highway 68)
Taos, New Mexico

Wednesday, July 2

- | | |
|------------|--|
| 9:30 a.m. | Call to Order
—Representative Edward C. Sandoval, Chair |
| 9:35 a.m. | Summary and Preview
—Pamela Ray, Staff Attorney, Legislative Council Service |
| 9:45 a.m. | Remarks from the Mayor of Taos and the Chair of the Taos Board of County Commissioners
—Bobby Duran, Mayor, Town of Taos
—Charlie Gonzales, Chair, Taos Board of County Commissioners |
| 10:45 a.m. | Potential State Revenue Impacts of Federal Stimulus Legislation
—Tom Clifford, Research Director, New Mexico Tax Research Institute |
| 11:45 a.m. | Lodgers Fee for Recreational Facilities
—Mark Yarvits, Chair, Park and Recreation Advisory Board, Town of Taos
—Thomas Tafoya, Member, Park and Recreation Advisory Board, Town of Taos |
| 12:30 p.m. | Lunch |
| 1:45 p.m. | Tax Increment District Update — Distributions and Technical Issues
—Jim Nunns, Tax Policy Director, Taxation and Revenue Department (TRD)
—Dan Weak, Lobbyist, SunCal New Mexico |
| 2:45 p.m. | Gross Receipts Increment for Education — Sunset and GRT Deduction for Taos Government Complex |

—Representative Roberto "Bobby" J. Gonzales
—Sammy J. Pacheco, Taos County Attorney

3:45 p.m. **North Central New Mexico Regional Transit District — Status and Plans**

—Josette Lucero, Executive Director, North Central New Mexico
Regional Transit District (NCRTD)
—Jack Valencia, Project Manager, NCRTD
—Bruce Rizzieri, Regional Transit Manager,
Rio-Metro Regional Transit District

4:30 p.m. **Recess**

Thursday, July 3

9:30 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

9:35 a.m. **Taos County Property Valuation**
—Darlene Vigil, Assessor, Taos County
—Gerald E. Nichols, Chief Appraiser/GIS Coordinator, Assessor's Office,
Taos County

10:30 a.m. **Personal Income Tax Simplification and Poverty Reduction**
—Rick Homans, Secretary, TRD
—Jim Nunns, Tax Policy Director, TRD

11:45 a.m. **Rural Transit Planning**
—Rhonda Faught, Secretary, Department of Transportation
—Frank Sharpless, Chief, Transit Rail Bureau, DOT

12:45 p.m. **Adjourn**

**MINUTES
of the
SECOND MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**July 2-3, 2008
Sagebrush Inn and Conference Center
Taos, New Mexico**

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:38 a.m. at the Sagebrush Inn Conference Center in Taos, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker of the House
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Rep. Henry Kiki Saavedra
Sen. William E. Sharer (07/02/08)

Absent

Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Sen. Bernadette M. Sanchez
Sen. John Arthur Smith

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubescic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. John Pena
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Don L. Tripp

Approved for Attendance,
Rep. Luciano "Lucky" Varela,

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Doris Faust, Staff Attorney, LCS
Doug Williams, Economist, LCS
Tim Crawford, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, July 2

Senator Cisneros, representing Taos, Rio Arriba and Santa Fe counties, was asked by the chair to continue to chair the meeting.

Summary and Preview

Ms. Ray reviewed the topics discussed at the RSTP meeting on June 5, 2008. A review of the agenda from that meeting can be found in the June 5, 2008 minutes. She also reviewed the agenda for the current meeting. No changes were required.

Mayor of Taos and Chair of the Taos Board of County Commissioners

Charlie Gonzales, chair, Taos Board of County Commissioners, greeted the committee and welcomed everyone to Taos. Mr. Gonzales previously was the mayor of Questa, New Mexico. He discussed the fire danger for the July 4 weekend. He noted that the Carson National Forest is open and expects heavy usage this weekend.

Bobby Duran, mayor, Town of Taos, also welcomed the committee members to Taos and thanked them for choosing Taos as the location for their meeting.

Revenue Impact of Federal Legislation

Tom Clifford, research director, New Mexico Tax Research Institute (NMTRI), discussed the state and local revenue impacts that are possible due to the 2008 Federal Economic Stimulus Act.

Mr. Clifford noted that there are three main components of the federal economic stimulus legislation:

1. individual rebates of \$600 per person and \$300 per child;

2. 50 percent bonus depreciation of equipment costs may be deducted immediately, thus allowing the depreciation to lower immediate tax liabilities, but causing loss of future tax benefits due to asset depreciation; and

3. Section 179: expenses on a limited amount of equipment may now be deducted immediately rather than depreciated over time, reducing liability now with an offsetting increase later.

The reason that these stimulus provisions are important to New Mexico is because the New Mexico income tax is coupled to the adjusted gross income provisions of the federal income tax. Mr. Clifford noted that there is some estimating and adjusting to figures because the federal fiscal year runs from October 1 to September 30, so the state only overlaps a federal fiscal year by nine months, and comparisons between federal tax collections and state tax collections require some adjustments to allow a comparison.

The basic conclusions that Mr. Clifford pointed out were:

- the federal economic stimulus legislation will result in almost \$800 million of federal tax savings for New Mexico residents and businesses in 2008;
- because New Mexico income tax is coupled to federal income tax, the Federal Stimulus Act of 2008 will *reduce* state revenues by about \$60 million over the 2008 income tax year and will *increase* state revenue collections from income tax after 2008;
- reduced federal taxes will stimulate spending by allowing taxpayers to keep more of their income in the short term, leading to higher income and higher state and local taxes, an increase of \$47 million over 2008;
- the net state general fund revenue will be slightly negative, about \$12 million over 2008, and will begin increasing again in 2009; and
- although the state could decouple from the federal tax, the negative impact of the Federal Stimulus Act of 2008 is for a one-year period only. Remaining coupled to the federal provisions will allow for increases in the future based especially on the depreciation benefits given.

Decoupling from the federal tax provisions is a question that arises fairly often. There are benefits and shortcomings to decoupling. New Mexico is among very few states whose income tax system is still linked to the federal tax system. In this particular case, decoupling would give a benefit in the first year and will not substantially alter the positive dynamic impacts that would be expected in upcoming years. The drawback to decoupling is in the level of complexity that would result. Taxpayers would need two sets of depreciation schedules applying only to equipment purchased during the period covered by the law, one for state tax purposes and one for federal tax purposes. These would have to be maintained for the life of the equipment.

Decoupling would not be in the best interests of the state because the federal stimulus act is a temporary act that will have an effect for a limited time.

Of the personal income tax (PIT) taxpayers who get rebates, one-half are expected to expend the rebate for goods or services within six months. The remainder will be saved or used to pay down debt. The depreciation benefits for businesses are expected to have a smaller impact, and only 25 percent of those receiving the benefit will spend the savings on goods or services immediately.

Some confusion developed over the multiplier effect, with some legislators suggesting the multiplier effect in New Mexico communities could be less than expected nationally, simply because fewer goods and services can be obtained through the local market. This is especially true for business expenditures. Mr. Clifford noted that although Super Walmarts increase the tax base of a community, they do not allow profits from the store to remain in the community; rather, they are sent to their headquarters. Also, all Super Walmarts do their purchasing from central warehouses, thus reducing their local purchases. To improve the multiplier effect, local businesses need to be encouraged because profits are kept locally, and purchases to support the business are more likely to be made locally. This supports the need for New Mexico to become more involved with the streamlined sales tax effort to make certain that internet sales have New Mexico taxes captured from them.

Lodger's Fee for Recreational Facilities

Mark Yarvits, chair, Park and Recreation Advisory Board, Town of Taos, and Thomas Tafoya, member, Park and Recreation Advisory Board, Town of Taos, discussed the need for a special lodger's fee to help recreational facilities in Taos.

A discussion ensued about why the lodger's tax could not be used. Lodger's tax is limited in its use and maximum imposition. A lodger's tax cannot exceed five percent of the gross taxable rent for lodging. Most of the lodger's tax must be used for "advertising, publicizing and promoting tourist related attractions, facilities and events". The wording of the statute was negotiated by municipalities and tourism lobbyists through a hard-fought battle. Taos needs this money to construct facilities. It is unlikely that changes could easily be made. The difficulty in obtaining consensus from all of the interested parties to make changes to include the tax increases desired by Taos for the purposes for which it is seeking the increase have led the Park and Recreation Advisory Board to set a surtax or fee on lodging rather than to amend the existing Lodgers' Tax Act. Surtaxes have been implemented in several communities: Las Cruces, Santa Fe and Angel Fire. This is the type of fee that Taos would like to implement on a countywide basis.

Minutes

The minutes of the June 5, 2008 meeting were moved for approval by Senator Taylor and seconded by Representative Gray. The minutes were approved without objection.

Tax Increment Development District Revenue Report and SunCal Update

Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), presented information on the state gross receipts taxes distributed to Mesa del Sol, the only tax increment development district (TIDD) to which tax increments are being distributed at this time. The first distribution to Mesa del Sol of its share of gross receipts taxes was made in March 2008 of money from taxes paid for January. Gross receipts taxes are collected by the twenty-fifth day of the month following the month in which the gross receipts are earned. January's gross receipts taxes were remitted by February 25 and distributed in March. Out of 6.75 percent of gross receipts taxes due to Bernalillo County, 62.2 percent is distributed to Mesa del Sol. One-half of the companies reporting gross receipts taxes in the Mesa del Sol area reported they were in the construction phase of their development. Out of the 62.2 percent of the gross receipts taxes generated from Mesa del Sol, 67.5 percent is distributed from state gross receipts taxes collected. These are gross receipts taxes that the state would have received, but for the creation of the Mesa del Sol TIDD. However, it could be argued that construction would not have been this far along and there would, therefore, be no new taxes from the area. April gross receipts taxes distributed in June were \$198,562.08, up from \$39,512.02 in March. The March gross receipts tax distribution was almost five times the February gross receipts tax distribution (\$9,922.33) and over twice the January gross receipts tax distribution (\$15,435.71). Of the four months of collected gross receipts taxes that were distributed by the date of the meeting, the state's share of the total distribution of \$263,432.14 was \$177,734.89. The percent of tax distributed so far is 62.2 percent of gross receipts taxes received. This amount is 67.5 percent of the state's share of those gross receipts taxes. These distribution percentages will not change unless the taxes imposed change.

The money distributed to Mesa del Sol will be used for horizontal infrastructure, such as water, sewer, roads and utilities. The committee requested information about the amount of money received by the University of New Mexico and by the State Land Office due to land sales for Mesa del Sol. Mr. Clifford noted that the NMTRI supports the state in its efforts to obtain more data so that the success of the use of tax increment financing of Mesa del Sol can be evaluated. There are two other TIDDs that have been created: Upper Petroglyphs of SunCal and a TIDD from the City of Las Cruces. The Las Cruces TIDD is in an area where businesses already exist, so the base gross receipts taxes will not be zero for that TIDD. Other TIDDs under consideration are the Verde TIDD, Winrock and Albuquerque Uptown TIDD (or possibly TIDDs), and a Farmington TIDD.

Currently, there is no formal requirement that a state agency gather data and evaluate the success of TIDDs.

Mr. Nunns identified several technical issues that the TRD would like to see corrected.

- The phrases "base gross receipts taxes" and "gross receipts tax increment" are defined in terms of tax collections, but should be defined as taxable gross receipts before the food and medical deductions; otherwise, there would be no gross receipts distribution for food or medical sales.
- "Base gross receipts taxes" must be determined by an estimate that will be difficult to develop, so instead, these taxes should be estimated from actual receipts in the first

year a district has a dedicated gross receipts tax increment, especially for TIDDs with a preexisting gross receipts tax base.

- The 25-year limit on the term of all bonds issued by a district from the date the first bond is issued creates a strong incentive for projects to be divided into multiple districts. This increases the administrative burden for reporting and increases the likelihood of errors. Each district requires a separate location code for reporting gross receipts taxes. Districts could be allowed to bond for 25 years against the increment to its gross receipts tax base in each of the initial years of the district, so the project's 25-year bonding authority term is staggered over the development phase of the project.
- Under current law, there is no provision for the allocation of any excess amounts of TIDD distributions after the termination of the district (and repayment of any outstanding bonds), and it has been suggested that a governing body could withdraw any revenue not needed for debt service at any time. To clarify how these funds are to be handled, explicit rules should describe the circumstances under which there are "excess increment revenues" that can be used for purposes other than debt service on increment bonds. The rules should specify which portion of those revenues revert to the general fund if any part of the gross receipts tax increment distributions were dedicated by the State Board of Finance (SBF) from state gross receipts taxes.
- Some additional minor technical changes may also be needed to clarify the law and facilitate tax compliance and administration.
- The TRD will need to make significant system changes to make distributions to a district that has non-zero "base gross receipts taxes", or a change in area. This will first need to occur for the Las Cruces TIDD and may require diversion of resources from other high-priority systems work to begin distributions by January 1, 2009.

A timeline of the TRD involvement with a TIDD is included in the handout in the committee file. Mr. Clifford noted that the NMTRI supports the need for more data to be made available to those entities that are following the impact of TIDDs on the New Mexico economy. Currently, there is no statutory requirement that a state agency analyze the impact of TIDDs as they are constituted on state revenue. The data should also be available to municipalities and counties in which TIDDs are located.

Mesa del Sol should report back to the committee in December with the breakdown of how much revenue is being generated by businesses generating gross receipts taxes from sources other than construction. There are annual reports required by the SBF that provide job creation statistics and other information on a TIDD. In addition, the Department of Finance and Administration may require periodic updates from the TIDDs on the bond and revenue balance. The NMTRI was requested to make a comparative analysis of the state's TIDD programs.

Mr. Nunns pointed out that the SBF is required to make some difficult assumptions about:

1. whether a business would have begun elsewhere or, without the TIDD, the business would never have been developed in New Mexico; and
2. whether a business has not created a net increase in revenue but has simply relocated in the state, possibly reducing the tax base of another municipality or county.

The New Mexico Finance Authority (NMFA) has oversight of the bond issues from each TIDD. The TIDD proposed for Winrock is considering using geothermal resources in the area for energy. As yet, TIDDs that are not producing gross receipts taxes are SunCal and the City of Las Cruces.

Vanessa Alarid, SunCal, spoke about the status of that TIDD. The TIDD will again introduce a bill for authorization to receive distributions from county and state gross receipts taxes. The SunCal TIDD is being developed with more modest distributions than Mesa del Sol. SunCal will split the gross receipts tax increments with the county 50-50. Richard Minzner, SunCal, noted that the initial step of creating the TIDD was to purchase the interest in the land from the Atrisco Land Grant heirs. SunCal must demonstrate to Bernalillo County that the gross receipts tax revenue distribution will be sufficient to repay bonds issued and that the remaining distribution to Bernalillo County will be sufficient to pay for county services that will be required by the TIDD. The TIDD must also comply with state purchasing laws. The TIDD will provide a balanced planned development, the value of which must be weighed against the uncontrolled and unplanned development that would normally occur on the west side of Bernalillo County. The TIDD does ensure that the growing community will pay for itself. The community will be one where residents can live, work and play in the same development with planned growth and services. It should not be parasitic on the local economy and should attract new businesses that were not intending to come to New Mexico.

Mesa del Sol will add \$1 million in property taxes to the county tax rolls.

Gross Receipts Tax Increment for Education-Sunset and Gross Receipts Tax Deduction for Taos Government Complex

Representative Gonzales opened the presentation by noting that 18 years ago, Taos requested a special 0.5 percent gross receipts tax increment from the legislature. It was approved by the legislature and put before the voters. When the hospital bonds that were issued to be paid by the gross receipts tax increment were repaid, the county returned to ask the legislature for authority to use the 0.5 percent increment for public school construction. Gross receipts taxes in Taos County are high, but the county would like to renew this 0.5 percent increment for education capital.

On another issue, the Taos Board of County Commissioners Chair Charlie Gonzales noted that the residents of the county in 2001 rejected funding for a new government

administration complex. In 2007, the county again requested the people to approve a tax for the county governmental complex, and the referendum passed by a margin of two to one.

Sammy Pacheco, Taos County attorney, noted that the voters adopted the last 1/16 percent gross receipts tax increment allowed and can now pay NMFA bonds off with local gross receipts tax revenue. There is, however, a \$13 million gap between costs and revenue available from taxes already in place, capital appropriations from the legislature and loans from the NMFA. In 2008, the county received \$200,000 of the \$10 million requested from the legislature for the governmental complex. If the cost of tax paid on the construction of the government administration complex were eliminated, that would save \$3 million of the \$10 million still needed on the project.

The bill presented to the committee allows contractors with the Taos County building a local government complex to present a non-taxable transaction certificate so that gross receipts taxes will not be charged on construction services, equipment and materials. Bill Fulginiti, New Mexico Municipal League, noted that the federal government might not approve of the state giving a specific tax exemption for construction of a government building for a county when the federal government would still be required to pay those taxes on its construction projects. Other legislators thought this might be a good idea for large governmental construction projects in their own districts. Concerns that this tax benefit might impair interstate commerce were also raised.

Regional Transit District Update

Josette Lucero, executive director, and Jack Valencia, project manager, North Central New Mexico Regional Transit District (NCRTD), presented an overview of the operation and activities of the NCRTD and an update on the status of the City and County of Santa Fe in the NCRTD.

There are now four transit districts in the state. Previously, there were 29. According to Ms. Lucero, the NCRTD believes that a state transit fund should be created to allow a stable revenue source to be created. A state transit fund could receive money from the federal government for transportation systems that will include the pueblos. Ohkay Owingeh and the Pueblos of San Ildefonso, Pojoaque, Tesuque, Taos and Santa Clara are members of the NCRTD. Twenty-two vehicles are now running from Rio Arriba County and Espanola to Santa Fe. Santa Fe County will meet on July 7 to decide if the county will remain a member of the NCRTD. If the county leaves the district, the City of Santa Fe has already decided it will opt out also. Right now, the NCRTD includes four counties: Santa Fe, Rio Arriba, Taos and Los Alamos. The NCRTD provides bus service from Questa to Santa Fe.

Mr. Valencia noted that only five percent of the transit needs of northern New Mexico have been met so far. Thirty million dollars is needed to bring rural transit initiatives up to 20 percent of the recognized need. The transit district has been trying to obtain money from the state for the last seven years, but none has been appropriated. The federal government has contributed \$550,000 to the communities of north central New Mexico during that period to provide mass transit. The transit district will now tie its routes into the Rail Runner. The city and county are concerned that residents of Santa Fe County will be taxed for the NCRTD and

also for the Rail Runner costs. The NCRTD was hoping to obtain \$23 million in operational revenue from Santa Fe County from the 1/16 percent gross receipts tax to be imposed. Santa Fe County is trying to retain all of the Santa Fe County and City of Santa Fe gross receipts taxes for projects that are specifically for Santa Fe County.

Bruce Rizzieri, Rio Metro Regional Transit District (RMRTD) manager, explained that his region contains 50 percent of the state's population and is where 45 percent of the state's employment is located. The RMRTD is always squeezed for funds. New Mexico is one of four states that does not have a state transit fund. Park and Ride services have been created to provide service in rural areas, such as from Rio Arriba, Taos and Los Alamos counties to Santa Fe and from Grant and Otero counties to Las Cruces. Park and Ride services also provide additional transit options for the elderly and are funded by a one percent increase in gross receipts taxes. The Rail Runner is now transporting around 3,000 passengers per day. Recently, cars have had to be added to accommodate the increased ridership. Parking must also be increased. The tax on the ballot in November will add parking spaces. It is expected that the ridership from Belen to Santa Fe will double the numbers using the Rail Runner. Stops are soon to be opened for the Pueblo of Isleta and Bosque Farms. A stop will be added once a station is constructed, and the local government desiring the stop must contract to have the station built. Committee members noted that for the various bond issues and other taxes to be successful in the fall, each local area will have to do its own promotions. It is clear that demands for alternative modes of transportation other than private vehicles are increasing throughout the state in both rural and metropolitan areas.

The committee recessed at 4:32 p.m.

Thursday, July 3

The committee was reconvened by Representative Sandoval at 9:33 a.m. The gavel was handed to Representative Gonzales, who represents much of Taos County.

Taos County Assessor

Darlene Vigil, Taos County assessor, spoke about the property tax issues that she is receiving input on from county residents. She noted that there was 49.95 percent per year population growth and rapid growth in the real estate market in Taos County. Gerald E. Nichols, chief appraiser and GIS coordinator, Taos County, informed the committee that there is no computer-assisted mass appraisal (CAMA) system in Taos County, so all valuations are done by hand. It is a very time-consuming process. As the population and properties that must be considered increase in number, the process gets more difficult. His staff checks properties to ensure that the taxation is correct. Staff look at square footing and the type of housing. Taos is a county with a two-year valuation cycle. In 2005, the county experienced a 20 percent increase in values but could generally only increase values by three percent. Now the assessment ratio is about 50 percent of market value. When new construction and sold homes are valued, the county sees substantial increases in valuation. Purchasers are surprised that they have to pay taxes that are substantially greater than the prior owner paid. Many times, escrow accounts are insufficiently funded to cover the increased tax burden.

Mr. Nichols noted that, in his experience, yield control has worked well in the past. He noted that increases in value generally drove tax rates lower. Now, due to the three percent limitation, yield control is not working to keep rates lower.

Mr. Nichols also noted that a CAMA system would benefit Taos County by allowing the assessor's office to manage data better and more accurately. It would help maintain a more consistent level of expertise in the office. When he leaves, much of the detail of valuing property and the historic issues that have arisen will leave with him. Computer skills and knowledge and the ability to manipulate data are important to provide accurate valuations in the current market.

It was noted that a large part of the problem of "tax lightning", as Mr. Nichols called the large increases in valuation and property taxes upon sales of homes or when a person constructs a new home, becomes alarming when the new owner is not informed about the increase in property taxes that the owner will experience in the second year of ownership. Mr. Nichols and Ms. Vigil noted that, in Taos County, the assessor's office will estimate the property taxes for a new owner if the owner will contact the office.

Some suggestions of resolutions that would ease the "tax lightning" situation were:

- to set a time limit on the three percent cap; the longer it is permitted to continue, the greater the discrepancy between the old owner's taxes and the new owner's taxes;
- occasionally, the assessor must address the difference between the actual tax on a home and the market value; and
- periodic reappraisals should be permitted and sales ratio analyses should be completed. The valuations should provide the assessor with 98 percent of the market value of a property. Prior to sale, these sales ratios should be compared to the sales price of the property.

Concerns exist that new purchases and reconstruction in old neighborhoods will raise the values of properties that are not upgraded. Disclosure by Realtors, mortgage companies and title companies is necessary and should be mandated. Ms. Vigil responded to a question about the current real estate market in Taos by stating that prices are still increasing, but fewer homes are selling. She also noted that assessors have less information on commercial property because sales prices are not required to be disclosed. It was noted that because it took three legislative sessions to get residential property sales price disclosure mandated, commercial property sales price disclosure will also present a battle.

A further discussion of yield control ensued. It was noted that the three percent limit does not limit increases in valuation for commercial properties. Increased revenue for a county of five percent is permitted by yield control for existing ownership. New construction and transfers are not included in the five percent yield limit. Revenues increase with the amount of

new construction in a community. Yield control also does not include debt service in its calculations. If the three percent limitation were lifted, local elderly people whose homes have been in the family for many years could be forced out of their homes by the increased property taxes on the property.

PIT Simplification and Poverty Reduction Task Force Progress

Rick Homans, secretary of taxation and revenue, and Mr. Nunns both discussed the Poverty Reduction Task Force recommendations and the benefits of the PIT simplification that Representative Sandoval introduced in the 2008 legislative session. A handout is in the meeting file. Secretary Homans is the chair of the Poverty Reduction Task Force.

Mr. Nunns spoke first about the PIT simplification bill. He noted that the TRD believes that the bill:

- increases fairness;
- decreases the costs of implementation both for the filer and the TRD;
- reduces the time taxpayers have to devote to preparation of taxes; and
- increases the flexibility of the tax system so that changes in federal income taxes are not reflected in the state revenue from state income taxes.

A new credit would replace several of the low-income and middle-income tax credits that are currently available to taxpayers, and the income levels would be adjusted automatically through indexing. Modified gross income (MGI) would be used rather than adjusted gross income (AGI), and the tax tables would include the credits and dependent exemptions now available. Pages 4 through 6 of the handout show the parts of the PIT forms that would be changed. A few people would have increased income above AGI, but far more would have reduced income reflected as MGI. Because there is no longer progressivity built into the income tax rates, all progressivity is provided by the array of income tax credits provided for low- and middle-income people, with the greatest effectiveness for people with incomes between \$20,000 and \$60,000. As the federal income tax laws change, the effect will not be as direct on state revenues.

Secretary Homans discussed the activities of the Poverty Reduction Task Force. The purposes of the Poverty Reduction Task Force are to research and consider:

- strategic initiatives to address hunger, housing and child care needs;
- adequate compensation and a fair minimum wage;
- tax credit changes to encourage work and reward work effort;
- more equitable eligibility requirements for unemployment benefits;

- easing access to higher education and promoting completion; and
- creating better employment opportunities for all New Mexicans.

The task force has reviewed the existing tax credit initiatives, such as the child daycare tax credit and the working families tax credit. The task force is required to present its findings to the governor on September 5, 2008. Changes will be sought to the child daycare tax credit to enhance its benefits to low-income taxpayers. More benefits for the elderly are also contemplated. It was noted by the committee that a single woman with children would have to increase her salary to \$43,000 before she could increase her actual take-home pay.

The cost of child care can be a significant barrier to entry into the work force for workers with children, particularly for low-paid workers who might have to pay a large part of their earnings for child care. Average child care costs exceed over \$5,000 per year, which would have a major effect on the budget of a single working mother. The current New Mexico child daycare credit is a refundable PIT credit of 40 percent of a worker's child care expenses for children under the age of 15 years. New Mexico residents with an income of up to \$27,248, or twice the federal minimum wage as of July 24, are eligible to claim the credit. Federal credits claimed for child or dependent care would be subtracted from the amount refunded by the state. Governor Richardson proposes to double the New Mexico child daycare tax credit. This will increase the amount claimed for a family with three or more children from \$1,200 to \$2,400, for a family with two children from \$960 to \$1,920; and for a family with one child from \$480 to \$960. It will apply to families with up to twice the New Mexico minimum wage of \$7.50 beginning on January 1, 2009, making the income limit \$31,200. To encourage work, the credit will be phased out for incomes from \$32,000 to \$36,000. The estimated cost of the increased benefit will be \$6.2 million in fiscal year 2010. See the handout for a comparison of the state's current and proposed child care tax credit and the federal child care tax credit.

Rural Transit Planning

Rhonda Faught, secretary of transportation, and Frank Sharpless, chief, Transit Rail Bureau, Department of Transportation (DOT) spoke about the status of the transit system the state is implementing and planning. David Harris, from the DOT, also spoke about the future of mass transit in New Mexico. They spoke about the need for regional transit districts (RTDs), such as the RMRTD. These districts are created to:

- consolidate existing services across jurisdictional lines;
- coordinate services;
- provide new or expanded services;
- maximize operating and administrative efficiencies;
- pursue federal funding; and

- seek gross receipts tax funding authority.

There are two RTDs moving forward with ballot initiatives to impose transit gross receipts taxes: the NCRTD and the RMRTD. Two other RTDs are working on their transit plans: the South Central RTD and the Southwest RTD. The Southwest RTD has approved taking over the Grant County "Corre Caminos" bus routes. The NCRTD will receive \$300,000 to upgrade and integrate its service plan. It recently included Taos in the district, which will bring in additional funds to the NCRTD. The RMRTD will receive \$250,000 from the state and will be receiving \$646,392 for capital expansion and renovation. The Park and Ride system creates the fourth largest public transit district in the state and runs buses to connect the major transport hubs throughout New Mexico, especially during the most traffic-congested times of day. Now, the ridership is 1,437 daily, which is a 36 percent increase in the last few months.

Transit agencies are finding that they are putting more and more funds into covering increased fuel costs. Still, in rural areas, only five percent of the need is being met. Twenty-seven counties have some level of public transit. Federal funding is flat and may be decreased, so the state will be expected to pick up an increasing amount of the cost of expanding public transit in the state. It is possible that much of the current transit need could be covered by increasing the motor vehicle excise tax by one percent.

Secretary Faught said that the Pueblo of Isleta Rail Runner station will soon be operational. The RMRTD will dedicate one-half of its gross receipts taxes to the Rail Runner and the rest to bus routes, especially as feeder lines to the Rail Runner. That tax would add \$13 million to the operating budgets of the three counties in the RMRTD. In response to a question from the committee, she noted that buses for the bus routes are generally purchased with federal funds. Rural areas are not able to access federal funding, except through the DOT.

The committee adjourned at 12:00 noon.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 5

August 2008
Agenda
Minutes

Revised: August 26, 2008

**TENTATIVE AGENDA
for the
THIRD MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**August 27-28, 2008
Ruidoso Convention Center
Ruidoso, New Mexico**

Wednesday, August 27

- 9:00 a.m. **Call to Order**
 —Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Welcome and Local Concerns**
 —Lonnie R. Nunley, Mayor, Ruidoso
 —Tom Armstrong, Mayor, Ruidoso Downs
 —Tom Battin, Chair, Lincoln County Board of County Commissioners
 —Sandi Aguilar, Executive Director, Ruidoso Valley Chamber of Commerce
- 10:00 a.m. **Regional Water Treatment Plant Update**
 —John Underwood, Attorney, City of Ruidoso
- 10:45 a.m. **Consensus Revenue Forecast — Post-Session Review**
 —Katherine Miller, Secretary of Finance and Administration
 —Rick Homans, Secretary of Taxation and Revenue
- 11:45 a.m. **The New Mexico Partnership**
 —Raymond Mondragon, New Mexico Partnership
 —Clark Krause, Chief Executive Officer, New Mexico Partnership
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Review of Tax Increment Development District and Act**
 —Terrence Moore, City Manager, Las Cruces
 —Norton Francis, Chief Economist, Legislative Finance Committee
 —Laird Graeser, Chief Economist, Department of Finance and Administration
 —Robert Hearn, Quality Growth Alliance of Dona Ana County
 —Sheila Duffy, Mesa del Sol
 —Vanessa Alarid, SunCal New Mexico

- 3:15 p.m. **New Mexico Horsemen's Association Update**
—Terry Walker, President, New Mexico Horsemen's Association (NMHA)
—Susan Vescovo, Vice President, NMHA
—Pat Bingham, Executive Director, NMHA
- 4:00 p.m. **Gaming Tax Issues**
—Len Stokes
- 4:15 p.m. **Equine Specimen Testing — Adequacy of New Mexico's Oversight, Testing Program and Facilities**
—Julian Luna, Executive Director, State Racing Commission (SRC)
—Dr. Walter Hyde, Iowa State University
—Thomas Bagwell, Acting Director, New Mexico Department of Agriculture

5:30 p.m. **Recess**

Thursday, August 28

- 9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. **SRC — Update**
—Arnold Rael, Chair, SRC
—Julian Luna, Executive Director, SRC
—Eddie Fowler, Member, SRC
- 10:00 a.m. **Gaming Control Board Update**
—David Norvell, Chair, Gaming Control Board
—John Monforte, Executive Director, Gaming Control Board
- 11:30 a.m. **Ruidoso Downs — Update**
—Ann McGovern, General Manager, Ruidoso Downs
—Bruce Rimbo, Ruidoso Downs
- 11:45 a.m. **Lunch**
- 1:30 p.m. **Ruidoso Downs Backside Tour**
- 3:00 p.m. **Adjourn**

**MINUTES
of the
THIRD MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**August 27-28, 2008
Ruidoso Convention Center
Ruidoso, New Mexico**

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:28 a.m. at the Ruidoso Convention Center in Ruidoso, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Rep. Anna M. Crook
Sen. Dianna J. Duran (8/28)
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Absent

Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan, Speaker of the House
Sen. John Arthur Smith
Sen. James G. Taylor

Designees

Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubescic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Rep. John Pena
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

Guest Legislator

Rep. W.C. "Dub" Williams

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)

Doris Faust, Staff Attorney, LCS

Cleo Griffith, Drafter, LCS

Tim Crawford, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, August 27**Local Officials' Report**

Lonnie Ray Nunley, mayor, Village of Ruidoso, Tom Armstrong, mayor, Village of Ruidoso Downs, Tom Battin, chair, Board of County Commissioners, Lincoln County, and Sandi Aguilar, executive director, Ruidoso Valley Chamber of Commerce, all welcomed the committee and presented the issues of concern to their constituents.

Mayor Nunley spoke about the flooding that had occurred prior to the special session of the legislature and caused severe damage to the communities of Ruidoso and Ruidoso Downs. He thanked the legislature for its quick response in providing much-needed funding to rebuild roads and bridges. He noted that the Ruidoso Downs racetrack is doing the best business it has done in years and expressed his community's concern that the legislature will do what needs to be done to make certain the racetrack remains in the community. He spoke about the wastewater treatment plant and noted that \$6.8 million has been made available through legislative appropriations to finish the plant. The plant needs to be completed as soon as possible because costs are rising so quickly that delaying completion will only increase the costs of the wastewater treatment plant. As it is, if costs of materials increase appreciably, more money will be needed before the plant can be completed. Mayor Nunley offered the committee a tour of the flooded area of the community if time allows.

Mayor Nunley noted that most bridges in Ruidoso were opened within two days of the flooding, by either clearing debris or constructing temporary crossings where needed. A few bridges took a week to 10 days to prepare crossings. The Federal Emergency Management Authority (FEMA) sent 12 to 15 people in to help assess damage and plan recovery. He lauded the response of the state homeland security people, especially Don Scott.

The next speaker was Mayor Tom Armstrong. He encouraged the legislature to support tax relief for the racetracks, which will enable them to become profitable and remain in the area. R.D. Hubbard, principal owner of the racetrack, was present throughout the meeting. Mayor Armstrong noted the impact the racetrack has on employment in the area. Almost all employment in the Village of Ruidoso Downs and much of the employment in Ruidoso is either directly or indirectly dependent on the racetrack and its good financial health.

Mr. Battin also expressed his appreciation to the committee for the rapid response of the legislature as well as the federal government following the flood. There was a great deal of work that had to be done immediately after the flood to rescue people who were stranded and to assess the damage and apply for appropriate aid. There was damage along the Rios Ruidoso, Hondo and Bonito.

Chairman Battin also informed the committee that Stuart Ashman, secretary of cultural affairs, had recently been to the area to announce the Spencer Theater partnership among the Lincoln County community, Eastern New Mexico University (ENMU) and the Cultural Affairs Department to provide a campus for the ENMU branch from grounds and buildings of the Spencer Estate and to make the Spencer Theater a state facility. He noted the community is very excited about the potential of the partnership and would like the legislature to ensure the continued support of the campus and theater plans. He spoke also of a new clinic in Capitan, a fire station in Glencoe and new pumper trucks for several communities. He noted that the county still will be seeking \$485,000 from the state to match the \$1 million already obtained for a district court complex.

For 61 years, since 1947, the racetrack has been the anchor of the tourism and prosperity of Lincoln County. He suggested that there be a "level playing field" as far as taxation of the tribes and Ruidoso Downs. The casino cannot support the track, but it must to keep purses healthy and tourists coming to town. There of course is limited business for the track and casino because of the location. The track has requested a graduated tax rate so that smaller racetracks will be able to compete better with tribal competition.

Ms. Aguilar spoke about the effect that moving the Ruidoso Downs racetrack and casino would have on the local population. She estimated that 1,500 people would be forced to move to find work elsewhere. Mr. Battin suggested that the tax rate should mirror the tribal tax rate in the 2007 amended compacts. This would mean that smaller racetrack casinos would pay a 10 percent tax on the \$10 million in net take from gaming machines and the higher rate of 26 percent would apply to casinos at racetracks when the net take exceeds \$14 million. A much lower amount would apply to racetracks whose casinos had net takes lower than \$10 million. His understanding is that the Mescalero Apache Tribe does not oppose graduating the gaming tax on racetrack casinos in a manner equivalent to that in the compacts. The only other racetracks this might apply to are Sun Ray in San Juan County and the new Raton track.

Representative Williams noted that the acquisition of the Spencer Theater by the state will promote greater cultural opportunities for community members. Mrs. Spencer, who left her

estate grounds and facilities to ENMU, expressed her wishes that ENMU would begin a performing arts academy at the location.

A discussion of indigent funds for medical care at hospitals developed. There was a question about whether the state took excess indigent funds from counties. It was noted that one year unencumbered and unexpended indigent funds were "swept up" by the state for use, but that was a one-year occurrence. The state in return allowed expansion of the use of indigent funds for more than hospitalization and providing health care solely for indigent people because counties had levied a tax to pay for indigent care, but some counties had minimal indigent care expenses so they built up reserves. The legislature changed the law to allow this money to be spent for some other limited purposes.

Mayor Nunley responded to a question from the committee regarding the county's ability to enter and clean up property, especially for fire protection. A provision has been adopted by Ruidoso and Lincoln County to have a 100-foot defensible area. It was pointed out that hot, rapidly moving fires can cross more than one-fourth of a mile of cleared and cleaned area, and the city and county noted that it is helpful to have the authority to enter onto noncompliant property owners' land to clear it and bill them. Mr. Battin noted that due to U.S. Forest Service work force reductions, more of the burden of reducing undergrowth and other fire fuel will fall to the municipalities and counties. Mr. Hubbard discussed the success of his racing enterprise and requested the committee members to endorse the legislative proposal that allows the graduated gaming tax based on the amount of revenue generated by a racetrack's gaming machines. He noted that he has never turned a profit at Ruidoso, but might be able to do so if the taxes are graduated. He has been contemplating moving the track closer to a larger population center so that his gaming machine use will increase. Ruidoso Downs and Billy the Kid Casino bring in about 10 percent less than it costs to run the track and affiliated businesses.

Regional Water Treatment Plant Update

John Underwood spoke about the wastewater treatment plant progress and the damage done by the flood. Deputy city manager Bill Morris is in charge of coordinating the flood damage response. Of the 12 bridges that were washed out, six have been repaired and the remainder have temporary crossings to allow residents to leave their homes as necessary. Seventy-five percent of the sewer and water lines in the upper canyon area will have to be replaced due to washouts. Parts of the river have changed course and that means that permanent structures have to be built over the new course. Many of the sites where bridges must be restored are in the temporary replacement phase. Next will come another better temporary fix that should last for the winter. Finally, in the spring, the construction of a new bridge will begin. The final bridges will be built to withstand flooding as was seen this year.

Mr. Morris continued that the repair work will require a 25 percent match for federal funds equating to \$4 or \$5 million.

When asked about fire evacuation routes, Mr. Morris said there are routes designated through U.S. Forest Service land and he is still determining what other options may be available. In responding to a question regarding sewer and water rate increases, Mr. Morris expressed his

feeling that it is unlikely that the rates would decrease again. For those who are not receiving services due to the flood, the monthly fees will be waived, although domestic solid waste and fees pledged to repay bonds will not be waived. There is also considerable cleanup necessary at the current wastewater treatment facility to return it to working order.

Mr. Underwood discussed the status of funding for the new wastewater treatment facility. Increased rates are now paying for the general obligation bonds that Ruidoso and Ruidoso Downs have issued. In "Phase 1A", \$7 million will be spent. The total cost is \$40 million now, double the initially estimated costs. The estimated costs a year or two ago was \$30 million. Because there is a cold water fishery in the Hondo Valley, the water must be very clean when returned to the stream. The new plant must be completed by January 2010 or sanctions will be levied on the communities. Ruidoso will have to pay its entire portion of the debt incurred for the wastewater treatment plant. It is considering imposing a one percent gross receipts surtax for environmental purposes and dedicating it to repay the wastewater plant bonds. It is anticipated that the tax would raise \$2 million per year. It would raise much of it from tourists through use of facilities. It would require legislation. The new plant will be very high-tech and will require renegotiation of joint powers agreements among the community partners. Mr. Underwood will be seeking passage of a water and wastewater authority act to allow the villages of Ruidoso and Ruidoso Downs to manage the plant after it is built. The flood was an unanticipated setback. One of the high-tech items in the plant will be the micro-membrane filters that will be required to be used. The plant was basically designed around the filters that were identified as being necessary to provide the purity of water required by state and federal regulations. Currently in Ruidoso, the gross receipts tax rate is 6.8325 percent and in Ruidoso Downs between 7.4 and 7.5 percent. The Mescalero Apache Tribe has entered into a contract to become a user of the new wastewater treatment plant. The communities are looking at Indian Health Service funds to provide some of the money for the plant, if possible.

Consensus Revenue Forecast — Post-Session Update

Rick Homans, secretary of taxation and revenue, Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), Laird Graeser, chief economist, Department of Finance and Administration (DFA), and Norton Francis, chief economist, Legislative Finance Committee (LFC), presented the presession forecasts with comments on changes that have occurred since the forecast in July. Handouts containing the details of the comments are in the meeting file. In July, the economists saw a modestly expanding economy in New Mexico embedded in the national economic woes. Now they see moderating to falling oil and gas prices. On August 14, the day before the special session, economists announced downward revisions of the revenue estimates. Another forecast will be available in October and the final forecast will be presented at the RSTP's December 15-16 meeting. The August numbers showed a \$203.1 million decrease in general fund revenue from the July forecast. Severance tax bond revenue was projected on August 14 to be down by at least \$12 million under the July forecast.

Mr. Graeser gave some background on the process of generating consensus revenue forecasts. The process was initiated in 1978 when the TRD was created and the Bureau of Revenue was subsumed into it. There have been 88 formal forecasts since then, and Mr. Graeser believes this is the longest continuous period for any state to have produced revenue forecasts.

A consensus forecast allows the executive and the legislature to enter each session with one forecasted revenue number. Both Al Maury and Bo Olcott previously were members of the consensus group. The economists are career state employees, except for the LFC economist, who is an at-will employee of the legislature. Usually, the error has been no more than three percent. The 2007 estimate was 16.7 percent below revenue. These are much less predictable times, but it is best to have an underestimate rather than an overestimate. The consensus group tends to use conservative estimates to predict estimates close but not above the actual revenue expected. Mr. Graeser said that it takes six to eight hours of debate to achieve consensus usually. That is followed by emails adjusting the various components of the estimate.

National inflation appears to be running at about six percent. Inflation in gasoline retail prices, food or many medical services has not been reflected in the gross receipts tax revenue realized by the state because these sectors do not pay gross receipts taxes. Home energy prices have inflated and gross receipts taxes are collected on that sale. A mild recession is forecast nationally for late 2008 and early 2009. These are generally easier to identify retrospectively. Page five of the handout shows the trend anticipated by Global Insight.

Secretary Homans noted that the fiscal year (FY) 2008 forecast will come in fairly close to the December 2007 forecast. It may have looked earlier in the year as if the state would have revenue greatly exceeding the forecast, but current events clearly are demanding reduction in projected revenue. Income taxes may be down by one percent. This is in part due to the final reduction in the income tax rate going into effect on January 1, 2008 and it will be reflected in the first half of FY09. State Land Office lease sales will be down by \$2.3 million. Tribal revenue sharing has exceeded estimates so far for FY09. The economists predict that oil and gas tax revenue will peak in FY09, but the high point may actually be in late FY08. Natural gas production appears that it will slow by as much as 1.3 percent in FY09. Oil and gas prices are expected to continue to moderate through FY10 and on into FY13. The expected \$99.2 million increase in nonrecurring funds will allow the state to maintain reserves at 10 percent. As the state depends on a volatile source of revenue such as oil and gas taxes, it is necessary to maintain 10 percent minimum reserves in case the production or the price of oil and gas falls unexpectedly during the year.

Mr. Francis discussed energy revenues and the positive effect they have had on keeping a positive revenue picture for the state. He reiterated that the state is seeing a decline in natural gas production at this time, which is a larger contributor to severance taxes than oil. A discussion of the difference between prices on San Juan natural gas, based on contract prices, versus the spot price of natural gas on the NYMEX ensued. There is usually a three percent minimum difference in the prices daily. Even though the spot price is down, San Juan producers will still get their contract price. It just so happened that the July forecast was based on the peak price of oil and gas before it started to slip. The current natural gas price is \$8.50 and it is anticipated to increase during the winter months. Part of the difficulty in the forecast is that it is based on the market prices and not the prices on the ground as represented by San Juan Basin prices. It was noted that the San Juan County economy usually is inverse to the national economy.

Mr. Graeser noted that San Juan County is becoming a retirement destination. Construction and mining employment can be used to indicate the health of the economy rather than oil and gas production employment. Due to this changing economy, the boom and bust cycles have mellowed. There is still a relatively small multiplier effect in the local economy.

A discussion ensued of the explanation of how the tax credit adopted in the special session will be disbursed. Secretary Homans was applauded on his efforts to provide clear information to the taxpayers. A point was made regarding the questioning of the consensus estimate process and results. Every legislator wanted to have a separate estimate made by LFC for various purposes during the session. The October estimates will be used to create agency budgets.

The New Mexico Partnership

Clarke Krause, CEO, and Ray Mondragon, board member, presented information on the New Mexico Partnership (NMP), an economic development group. The NMP looks for companies to enhance and sustain New Mexico's economic vitality. It is a public/private partnership that helps the relocation and expansion of companies. They believe that their efforts have increased jobs in New Mexico by 5,282 since July 2007. Of those jobs, 996 were located in rural communities. Mr. Krause noted that they have seen some of the tax incentives adopted by the legislature work well. The high-wage jobs tax credit and the rural jobs tax credit have been especially useful in attracting businesses. He noted that all actions of the legislature should be reviewed to determine what effect the action will have on attracting businesses to the state. New Mexico is well situated to develop a renewable energy economy as the national economy slows. Fifty percent of the site visits by companies looking for a place to set up a business are renewable energy companies looking for a site. These companies are international companies, as well as New Mexico companies and other national companies. Once the federal government passes more renewable energy tax credits, more companies will want to develop here. Schott Solar choosing New Mexico is a big win for the state. These companies are looking for a good solar resource, space and water. Media companies are also coming to New Mexico. Video game production and program development companies have been looking at New Mexico. Eclipse Aviation had 650 employees and now these families will be seeking other employment. Hewlett Packard and Fidelity also have come into the state and have used the high-wage jobs tax credit to their advantage for employees making over \$36,000 per year. Four hundred jobs will be added in addition to the 858 jobs already planned. Fox-Con, a Mexican company, is anticipating creating a site at Santa Teresa near the border crossing. Currently, the company people 30,000 employees in Mexico.

Fred Mondragon, secretary of economic development, noted that the need is now on economic development infrastructure. He noted that the setback experienced by Eclipse will be temporary and it will retool and be back in business in three to five months. The company was selling its planes for \$2.1 million each, but in reality it was costing about \$2.8 million to build. The company was producing one jet per day, but had planned to produce two to four jets per day. One thousand two hundred workers are still employed, but the rest are seeking work elsewhere. Mr. Mondragon noted that the state had invested about \$19 million in Eclipse, but the private sector had invested many billions of dollars.

A discussion ensued of the need for the LFC as well as the RSTP to receive more information on the tax credits that are being used by various companies. It is difficult for the legislature to determine which credits truly benefit the companies and the state without further information. The committees will work more closely with the Economic Development Department (EDD) to obtain more information on tax credits.

Community colleges and the New Mexico university system have responded well to the needs of new employers to provide training to new employees. Most of the companies are hiring most of their employees from within New Mexico. Even Fidelity has chosen to hire locally. Problems that are appearing are drug-related and avoiding those with criminal records. Some employees do not show up for interviews and appointments for drug testing. These are issues that must be dealt with in New Mexico's population. Preapprenticeship programs are being created to help move New Mexico residents into apprenticeship positions.

Review of Tax Increment Development Districts (TIDD) and the Tax Increment for Development Act (TIDA)

Terrence Moore, manager, Las Cruces, spoke first about the TIDD Las Cruces has formed. He noted that he had experience in Florida as a city manager, and he worked with many TIDDs there. He noted that this will be the first TIDD to have base revenue that is above zero in New Mexico. The purpose of the TIDD is to revitalize an established area of Las Cruces, the downtown area. A TIDD is a way to engage sufficient financial resources to revitalize an area that has fallen into stagnation or has deteriorated. It is a way to invest in neighborhoods. It allows a 25-year period while bonds are being paid off to implement the revitalization. Florida has been using tax increment financing since 1969 and there are several hundred districts there now.

The baseline tax level will be developed by the TRD. Both Dona Ana County and Las Cruces have authorized the TIDD. The structure of the TIDD is a five-member board appointed by the governing bodies that formed the TIDD or the governing body itself. The terms will be staggered, with some of the first terms being four years, others six years. At the end of the first term, TIDD property owners and resident electors will vote on the members of the board. Mr. Moore suggested that the better way to start the board is to have the members of the governing bodies be the first TIDD board members and to allow an adjunct member who is nonvoting and not a county commission or a city council member. The council can then limit the spending to agreed upon, necessary projects and this would allow for incremental tax revenue to be realized as soon as possible. The state and the community of Las Cruces will realize increased jobs and controlled economic development.

As yet, Dona Ana County has not determined the amount of gross receipts and property taxes it will forego for that part of the TIDD that is outside of Las Cruces. The city of Las Cruces has dedicated 75 percent of gross receipts tax revenue to the TIDD. The TIDD is requesting the state to dedicate 75 percent of gross receipts taxes also.

Mr. Francis and Mr. Graeser suggested some changes to the TIDA. Mr. Francis suggested that the LFC be added to the distribution list of information disseminated by TIDDs to

their local governments. Mr. Francis noted that, currently, there are three city councilors on the board of Mesa del Sol. Mr. Graeser noted that the state has no membership on the TIDD boards and recommended that such a position be included in the law for the DFA or a designee.

Mr. Graeser discussed the proposed DFA rules for a TIDD approval process. Included are criteria and guidelines for submission of applications and uniformity of information provided. An annual report will be required from each TIDD. Deadlines for submission of information that is required and to whom the regulations apply are also included in the rules. The rules include a methodology for creating TIDDs, so that it is not necessary to retrain TIDD proponents and principals for each submission of an application. Also included are guidelines for the State Board of Finance and the information it will require to approve or review a new application.

Mr. Moore noted that Las Cruces has created one TIDD that will exist for 25 years. Mesa del Sol has four TIDDs, each with a different date to issue bonds, so that each bond issue will extend over 25 years, but the total time that there will be a TIDD at Mesa del Sol will extend for a period longer than 25 years.

There were two TIDD bills considered in the 2008 regular session, but neither was adopted. It appears that there is agreement that the following should be included in a bill:

1. state representation on TIDD boards and during the TIDD application process;
2. dissemination of information needs to be more explicit as to when and to whom information should be sent;
3. the purposes for which bond proceeds may be used need to be clarified and tax revenue should be restricted to use for bond repayment only;
4. the question of whether greenfield development versus redevelopment should be clarified and set to rest; and
5. continued research and evaluation of TIDD activity in New Mexico needs to be explicitly defined.

Richard Minzner, representing SunCal, spoke about the greenfield issue. He noted that each area where a TIDD is anticipated is different, and that decisions should be based on the merits of each proposal. Trying to establish one-rule-fits-all will inhibit the creation of good projects in the state. He noted that there is no requirement in the state law except that there be no net impact on the local communities in which the TIDDs locate. Both SunCal and Mesa del Sol are being careful to comply with the need for "no net impact" as a part of the contract they have entered into with the local governments. This requires that the remaining taxes derived by the state and local governments are adequate to cover the costs of services provided to the newly developing areas.

Robert Hearn from the Quality Growth Alliance of Dona Ana County noted that the developer retains control over the TIDD board with little state or local oversight. The public receives little more than promotional information from TIDD boards. He mentioned that the interest paid over a 25-year period on \$5 million in bonds will be \$1.2 billion, or two to three

times the original cost of the infrastructure purchased and installed. In that 25 years, the infrastructure will begin to need expansion or repairs and will always need maintenance. Hopefully, most upkeep will not require large financial input until the bonds are retired. Very few states use sales tax to finance TIDDs. Most states do not permit greenfield TIDDs.

Sheila Duffy, Mesa del Sol, discussed the planned economic development and job creation aspect of Mesa del Sol. She noted that Mesa del Sol does have four TIDDs, but each will only exist for the 25-year period during which the bonds are being paid off. She estimates that there are about 3,000 current jobs in construction of the TIDD and when the TIDD is fully built, there should be at least 8,000 jobs created. No bonds have been issued yet because there is limited revenue for repayment right now. She noted the request from the DFA and LFC to receive reports and information from Mesa del Sol on its progress and will provide those documents at the same time that documents are provided to Albuquerque. The purpose of a TIDD is to use future dollars to build a quality development up-front. The cost and the risk are primarily on the developer. She reminded the committee that the TIDD may not take credit for retail sales that will occur in the area within the TIDD. Ms. Duffy pointed out that "no net impact" means no net expense to the local government to provide normal services.

Questions about the incentives that are used in other states, especially the surrounding states, in conjunction with TIDDs were posed by the committee. The members were also concerned about tracking the personal income tax revenue and corporate income tax revenue resulting from the TIDD activity. Mr. Hearn expressed a concern of his group that all expansion money of the governments where TIDDs locate will be tied up in repaying the bonds so that there is no additional money for expansion of services. Mr. Minzner noted that SunCal is not in opposition to a state presence on the board of a TIDD. As to a moratorium on the use of greenfields in TIDDs, he felt that currently there is nothing in the law requiring that a TIDD only be a redevelopment project. Mr. Minzner feels that instead of well-planned development, requiring redevelopment will promote the quickest, least costly development, which is to develop residential areas, not to develop a new community where jobs are available close to homes. All TIDDs must meet the "no net expense" or "no net impact" test, unless it is required in the contract of the TIDD. Ms. Duffy noted that Mesa del Sol is required to provide work force housing for 20 percent of the work force that will be located in that TIDD. Mesa del Sol has no problem with increased state oversight. She believes it would be no problem for Mesa del Sol to provide the public with information.

New Mexico Horsemen's Association Update

Terry Walker, president, New Mexico Horsemen's Association (NMHA), Susan Vescovo, vice president, NMHA, Pat Bingham, executive director, NMHA, and John Lee Thompson, lobbyist, NMHA, presented an update on the status of the racing industry from their point of view. They began by thanking Ruidoso Downs for having the track back in racing condition so quickly after the flood damaged it.

Background on the NMHA was given by Mr. Walker. There are 5,000 members and horsemen have a large impact on the state's economy. There are 1,500 to 2,000 racehorses in the state and a large number of people are employed at the tracks and taking care of the horses at

other locations. During the days that there was damage at the Ruidoso track, horses were moved to Albuquerque to be housed. "Lineage Day" was postponed and will occur at Ruidoso over the weekend.

Ms. Vescovo encouraged the committee to support NMHA's efforts to include account wagering in the Horse Racing Act. It is a system where people who are consistent wagerers at tracks set up an account from which bets are paid. There are many horsemen who do not get the money that has been wagered on their horses. Account wagering in the state would keep money in New Mexico and prevent it from being set up in offshore accounts. Advanced deposit wagering, also known as "ADW", would allow bets to be placed from a location other than the track where the race is occurring. The track where the horse is run acts as a bank, and a wager can be activated by a phone call or email. Winnings are credited to the account and losses are debited from it.

Ms. Vescovo spoke about retainage at the track. The net retained, after bets and expenses are paid, is divided so that half goes to the track for operations and half goes to purses. This may amount to \$75 to \$76 million. When questioned by the committee about whether account betting or ADW would reduce the attendance at the tracks, Ms. Vescovo felt it would enhance interest in the track and not necessarily reduce attendance. She thought that those who live farther away from the track would be able to participate, even though they would be unable to make it to the track. To encourage attendance at the tracks, certain telephone area codes or local exchanges could be blocked. An account wagering bill was introduced several sessions ago.

Gaming Tax Issues

Len and Chery Stokes presented an issue to the committee dealing with the desire of the community to keep the Downs at Ruidoso Downs. Mr. Stokes is a rancher and water rights consultant and Mrs. Stokes is the proprietor of a shoe store in Ruidoso. They commented that the loss of the track would make the Ruidoso area more similar to Cloudcroft. The track has had three owners, the Eliseo family, the Jockey Club and Mr. Hubbard. The track was almost closed under the Eliseos and then again under the Jockey Club, which ran both Ruidoso Downs and Sunland Park. They wanted to let the committee know that if Ruidoso Downs moves from the area, 30 to 75 percent of the businesses in Ruidoso would have to move also. They commented on the need for the track to become profitable and encouraged the committee members to favorably support the graduated tax bill that was presented to the legislature in the 2008 legislative session.

Equine Specimen Testing — Adequacy of New Mexico's Oversight, Testing Program and Facilities

Arnold Rael, chair, State Racing Commission (SRC), Julian Luna, executive director, SRC, Tom Bagwell, director, New Mexico Department of Agriculture, and Dr. Warren Hyde next presented. Mr. Luna introduced the panel and Mr. Rael gave a short history of racing in New Mexico. He noted that racing began in 1938 in Albuquerque, and Raton was the first commercial track to open for horse racing. Agriculture in the South Valley of Bernalillo County, Belen, Las Cruces and Espanola supported the industry. Now breeding farms in New Mexico for quarter horses and thoroughbreds are a growing industry. Horse sales, such as the one held

here at Ruidoso over the Labor Day weekend are great economic boons to local communities. Breeders are expecting increased purchase prices for their horses. Many people are employed by the industry. Local and state taxes are paid on the sales. Now races such as the All American Futurity are simulcast throughout the U.S., Europe and other countries overseas.

Mr. Luna began the discussion of drug testing and its importance in maintaining the integrity of horse racing. It is a high priority of the SRC. There is no testing lab in New Mexico because the state has not been willing to invest the needed money in creating the quality of lab that is necessary to provide the results as consistently and quickly as needed. New Mexico now contracts with the lab at Iowa State University through a contract with that lab. Dr. Hyde is the head of the Iowa State laboratory that processes New Mexico's samples.

Mr. Bagwell noted that New Mexico State University (NMSU) has been investigating the possibility of beginning an equine specimen testing laboratory to be housed at NMSU. Right now, there is a joint powers agreement with the SRC that gives NMSU the authority to contract with Iowa State to process the specimens. That contract will last for another three years. The volume of samples submitted by the state would not be adequate to make a lab profitable. However, once the lab is established, it would seek out other states with racing industries and the need for reliable testing. It will take about 10,000 samples to make the lab profitable; now New Mexico only generates 3,000 to 4,000 samples annually. The lab would have to be a center of excellence or no other states would contract with it and the reputation of the state's racing industry would rely on the quality of the testing from the lab. The lab would have to meet national standards. This will require state-of-the art equipment in the lab and state support for the first seven to 10 years.

There would have to be general obligation bond appropriations to provide some construction money for a lab and a revenue stream would have to be dedicated from the horse racing industry and state appropriations to run the lab.

Dr. Hyde, who is in charge of the veterinary medicine laboratory at Iowa State University, spoke about the philosophy of supporting drug testing to keep the standards of the racing industry high in New Mexico. Routine testing does not identify where problems are found and ongoing research is needed to resolve the problems that develop in the industry. Testing is important for the safety, health and well-being of the horses and also helps to ensure the safety of the jockeys. There are only two labs worldwide that can do some of the more difficult tests, such as tests for anabolic steroids in equines. Racetracks around the country and the world rely on leading-edge science to keep on top of the needs of the industry. Tracks in Iowa, Kentucky, New Mexico, Virginia and Trinidad and Tobago use the facilities at Iowa State University. Dr. Huber, the state chemist, rechecks findings of Dr. Hyde. Dr. Flint Taylor is the state veterinarian. Eddie Fowler, member, SRC, noted that a similar number of horses run in New Mexico and Oklahoma. Stalls are about 800 during off-peak times at Sunland Park and increase to 1,500 horses on site during peak times.

Iowa State's testing lab can perform immuno assay tests and liquid and gas chromatography analysis. All samples submitted are sent to the Iowa State testing lab.

Currently, the SRC is taking and submitting about 6,700 tests per year. With a new track anticipated to come on line in 2010, that number will increase. Extra funding will be necessary to process those samples. Of those New Mexico equine samples submitted, there were five that tested positive for anabolic steroids, 10 tested positive for cortico steroids and many other compounds have been tested for over the last few years. Beginning January 1, 2009, no more steroids will be permitted to be used on horses on New Mexico tracks. It will be important that all jurisdictions prohibit the same compounds and use the same standards. If a horse is found to have a class III drug in its urine, it will lose all winnings and the owner will lose its license. An owner is banned if its horses are found more than one time to have illegal substances in their urine. Class I drugs are the most forbidden; class IV drugs are those of least concern. Everyone gets penalized: the owner, trainer and jockey.

Minutes of July 2-3, 2008 Meeting

The minutes of the July 2-3, 2008 meeting in Taos were adopted as written without objection.

Recess

The committee recessed at 5:52 p.m.

Thursday, August 28, 2008

The committee was reconvened by Representative Sandoval, chair, at 9:11 a.m.

State Racing Commission — Update

Mr. Rael continued providing background of racing in New Mexico. He discussed the choice of Raton as the next horse racetrack to be licensed in New Mexico. There will be 60 race days, 1,500 stalls and racing will take place in the summer. Because of the increased regulatory and oversight required to cover the Raton track, the SRC will be seeking enhanced funding from the legislature. Larry Delgado, the newest member of the SRC, spoke of the surprise he felt when he became aware of the financial impact of racing in New Mexico. Mr. Fowler spoke about the progress in the industry and noted that the number of instate breeding horses is increasing constantly. In Bernalillo County there are stud farms, especially in the South Valley. Also, in the Hondo Valley, stud farms are increasing in number. One farm, owned by the Yates family, produces quarter horses that are among the best in the world. Thoroughbreds are also developing in strength, especially at Sunland Park. The choice of Raton was because it filled a gap in the northeast corner of the state.

With the new Raton track the testing demands will increase in the state. Currently, one-third of the SRC budget covers the costs of equine specimen testing. The new track will increase that cost by \$100,000 to \$200,000 per year.

There will be a hearing about the application from a Lordsburg group that has submitted an application for a track in that corner of the state. Even though the decision about the Raton track was made on August 25, 2008, the SRC still must hold a hearing on the Lordsburg application. The newest tribal gaming compact limits the state to no more than six racetracks.

The five current tracks generate purses of \$46 million. The medical investigators that work in the industry must be highly trained to assist in keeping the races as clean as possible.

Bill Hayles of the Zia Track in Hobbs said that track would generate \$24 million this year. The new track to be built in Moriarty, where the Downs at Albuquerque will move, will cost \$55 to \$65 million. Because the Downs at Santa Fe is within an 80-mile radius of Moriarty, Santa Fe would have to require, pursuant to federal law, approval from Moriarty to begin simulcasting again. Because the Downs at Albuquerque would not give the approval, Santa Fe was not considered as the last track to be opened in New Mexico.

The SRC will be seeking a budget expansion for a new financial specialist and also for more investigators. Drug testing of jockeys will have to be increased.

Raton will race quarter horses two years old and older for 60 days. Ruidoso's races are to quarter horse racing what the triple crown races are to thoroughbred horses. The members of the committee discussed how the flow of people from Texas and points east to Ruidoso is important to the economies of the towns in eastern New Mexico.

The races at the state fair will still be run, but the races at other times of the year will cease when the license is moved to Moriarty.

Gaming Control Board Update

Dave Norvell, chair, Gaming Control Board (GCB), introduced the other members of his panel that included John Montforte, executive director, GCB, Georgene Lewis, state gaming representative, Don Dutton and Demesia Padilla, CPA, members, GCB, Greg Saunders, central monitoring system, and Frank Baca, attorney, GCB. He continued that even though the economy seems to be in decline, the gaming revenues are so far unaffected. He noted that there will be some bills from the GCB on compulsive gambling that will be introduced in the upcoming session.

Mr. Montforte began by explaining that the GCB discovered that some machines at Zia Park and Sunland Park were manipulated by a player in a way that returned the bet money to the player. Sunland Park lost about \$24,000 and Zia lost about \$8,000 because by then the method was understood and the perpetrator was being observed. The court decided that the law does not cover cheating by manipulation of a gaming machine, so the law will need to be changed to cover similar situations in the future. The machines were misused or used in an unorthodox manner to control the operation of the machine.

Mr. Montforte informed the committee that there are now 62 employees at the GCB. One law enforcement officer conducts audits and one other officer covers tribal situations. The oversight of tribes is mainly to monitor tribal gaming and to review the gaming documentation received from the tribes. The handout has more detailed information about the operation of the GCB. There are currently five gaming sites at racetracks, 57 sites at nonprofit organizations, 89 bingo operations and 13 tribal gaming locations. Buffalo Thunder, which opened shortly before

the special session, has 1,200 gaming machines. The Navajo tribal casino on I-40 at Churchrock will open with 370 gaming machines. There will also be table games.

The "net take" for licensees regulated by the Gaming Control Act in FY07 was:

Racetrack gaming operators	\$248,578,412
Nonprofit gaming operators	\$11,662,016.

The "net win" for tribal casinos was \$711,147,695 in the last fiscal year.

Gaming taxes paid in FY07:

Racetracks	\$64,630,387
Bingo and taffle	\$125,361
Nonprofits	\$1,166,202
Manufacturers/distributors	\$1,294,002.

Revenue sharing from tribal casinos for FY07:

Tribal casino revenue sharing	\$66,880,148
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Pursuant to the 2007 compacts, tribes must disclose to the state how they are using their compulsive gambling prevention money. Four tribes under the 2001 compact can still maintain that information as confidential. Racetracks must identify how the money they are required to set aside is used.

Several problems occurred in the last year; most are still ongoing but no longer a crisis situation. The Fort Sill Apache site at Akela Flats between Deming and Las Cruces is evidently on hold until the details of what the tribe can do can be worked out. The move of the Downs at Albuquerque to Moriarty will have to comply with the provisions of the Gaming Control Act to be licensed to offer gaming machines for operation. A cybercafe in Las Cruces was allowing illegal gambling. The company tried to sell illegal gambling through cybercafes through sweepstakes sales. The expectation is that these operations will pop up around the state until they are all shut down.

The GCB is requesting funding for electronic fingerprinting equipment. The tribes have asked the state to partner with them to do background investigations of employees and would like to do the fingerprinting electronically to save time. The process will provide the state with additional information on who the tribes are hiring in their casinos.

Mr. Saunders assured the committee that the machine manipulation that was discovered can no longer happen. The board was asked how many machines are operated on tribal land.

The status of the Fort Sill Apache operation at Akela Flats is:

- a restaurant and smoke shop are operating;
- a poker tournament was held; the house was not the bank;

- the location is not eligible for Class III gaming unless it enters into a compact and is theoretically barred from gaming of any sort by the terms of acquisition of the land it had put in trust;
- the tribe has no compact; and
- the tribe is in litigation in Oklahoma against the Department of Interior (DOI), claiming that the agreement between Fort Sill Apaches and the DOI allows the tribe to game on the Akela Flats property.

Ms. Lewis commented that the Pueblo of Pojoaque will continue to operate Cities of Gold as well as Buffalo Thunder and expects a six percent increase in revenue in the current year.

Mr. Montforte noted that there were no known cases of Class II gaming machine use in New Mexico by the tribes at this time. He has heard that some tribes are considering opening third and fourth gaming establishment sites with Class II machines only. This would then not be part of the compact limitation to two sites. Fort Sill Apaches are planning a Class II gaming machine site at Akela Flats from the information available.

There is a new central monitoring system in place. This system will allow machines of any manufacture to be installed. No barrier exists regarding the manufacture of machines. Some machine manufacturers will not get licensed in New Mexico because of limited sales and the high price of a license. Gaming machines are required to pay out 80 percent of the intake of the machine. The GCB will provide the committee with a map of the locations of all of the gaming sites in the state. Ms. Padilla noted that, with the nonprofits and bingo and raffle operations, there is a lot of "hand-holding" needed to keep them in compliance with the rules. This is especially true because their work forces are predominantly volunteers.

In response to a committee question, Mr. Norvell pointed out that a tribal gaming enterprise is one entity that could have several facilities at various sites on the tribe's land. For instance, the Pueblo of Pojoaque has seven gaming facilities at this time. These are the casinos and gaming machines at the tribe's gas stations and sports bar. The tribes have requested that the GCB help them with electronic fingerprinting. This will cost \$40,000 for software and \$80,000 in recurring costs. The tribes pay \$1.5 million in regulatory fees that are supposed to reflect, according to federal law, the actual amount of regulatory costs incurred by the state on behalf of tribal gaming.

The Downs at Ruidoso and the Billy the Kid Casino

Mr. Hubbard, Bruce Rimbo, consultant, and Anne McGovern, general manager of the Downs at Ruidoso, gave an update on activity at the track in the past year. Labor Day weekend, the weekend following the meeting, will be the end of the race meet for the track for 2008. This year saw the bets increase above last year at the track, even with the four or five days that the track had to close due to the flooding from the rivers and streams in the area. The net win from the casino is decreasing, especially since the opening of the casinos at the Inn of the Mountain Gods and other locations on the Mescalero Apache Tribe's land.

Ms. McGovern showed slides of the extent of the flood at the downs and the damage that resulted. Restoring the facility to a condition for racing to resume took only four or five days.

A more thorough discussion ensued of the legislative proposal that the track would like to present to the legislature in the upcoming session to graduate the gaming tax based on the net take of the gaming operator licensee.

Adjournment

The committee adjourned at 11:43 a.m. A tour of Ruidoso Downs was offered to members of the committee following lunch. The stalls and other areas of the track were toured and viewed by the members, although most of the discussion centered on the flood damage to the track.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 6

September 2008
Agenda
Minutes

Revised: September 4, 2008

**TENTATIVE AGENDA
for the
FOURTH MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

September 10, 2008
BHP and PNM Tours

**September 11 and 12, 2008
San Juan College, Zia Room
Farmington, New Mexico**

Wednesday, September 10

8:30 a.m. **PNM and BHP Tours (BE EARLY)**
—Leave from the Courtyard by Marriott, 560 Scott Avenue
(Open to Preregistered Participants Only)

Thursday, September 11

9:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair

9:05 a.m. **Remarks from the Mayor of Farmington and the Chair of the San Juan County Board of County Commissioners**
—Dr. Carol Spencer, President, San Juan College
—William E. Standley, Mayor, Farmington
—Tony Atkinson, Chair, San Juan County Board of County Commissioners

9:45 a.m. **Local Tax Base — Composition and Adequacy**
—Rob Mayes, City Manager, Farmington
—Andy Mason, Financial Officer, Farmington
—Kathy Lamb, Assistant Financial Officer, Aztec
—Keith Johnson, City Manager, Bloomfield
—Kevin Rodolph, Financial Manager, Bloomfield
—Keith Johns, County Executive Officer, San Juan County
—Tasia Young, Lobbyist, New Mexico Association of Counties
—Bill Fulginiti, Executive Director, New Mexico Municipal League

12:30 p.m. **Lunch**

1:15 p.m. **Coal in San Juan County**
—Glenn Kellow, President and Chief Operating Officer, BHP Billiton

New Mexico Coal

- 2:15 p.m. **Taxation and Revenue Department Legislative Proposals — Options Under Consideration**
—Rick Homans, Secretary, Taxation and Revenue Department (TRD)
—Jim Nunns, Tax Policy Director, TRD
- 3:15 p.m. **Master Settlement Agreement and Tobacco Sales Enforcement Issues**
—David K. Thomson, Deputy Attorney General, Office of the Attorney General
—Claudia Ravanelli, Special Projects Coordinator-Head Paralegal, Litigation Division, Office of the Attorney General
- 4:15 p.m. **Sithe Global Update**
—Dirk Strassfeld, Vice President, Sithe Global
- 5:15 p.m. **Recess**

Friday, September 12

- 9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Managing Oil and Gas Revenue Volatility**
—Tom Clifford, Research Director, New Mexico Tax Research Institute
- 10:00 a.m. **Oil and Gas Well Visit**
—T. Greg Merrion, Merrion Oil and Gas Corporation
- 11:00 a.m. **Jurisdictional Response to House Bill 219 (2007)**
—Michael Arellano, Chief Building Official, Rio Rancho
—Chris Williams, Building Official, Los Alamos
—Lisa Martinez, Director, Construction Industries Division, Regulation and Licensing Department
- 12:00 noon **Adjourn**

**MINUTES
of the
FOURTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**September 11-12, 2008
San Juan College, Zia Room
Farmington, New Mexico**

September 10, 2008
Tour of BHP Underground Mine and PNM Coal-Fired Electric Generating Plant**

The fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 10:23 a.m. in the Zia Room of San Juan College in Farmington, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Cisco McSorley (9-11)
Sen. Steven P. Neville
San. Nancy Rodriguez (9-11)
Rep. Henry Kiki Saavedra
Sen. William E. Sharer

Absent

Sen. Mark Boitano
Sen. Kent L. Cravens
Sen. Dianna J. Duran
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Sen. Bernadette M. Sanchez

Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubestic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Andy Nuñez
Rep. John Pena
Sen. John C. Ryan
Rep. Don L. Tripp

Guests

Rep. Debbie A. Rodella

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Doris Faust, Staff Attorney, LCS
Cleo Griffith, Drafter, LCS
Tim Crawford, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

****Wednesday, September 10**

Tour of PNM Coal Generating Power Plant and BHP Underground Coal Mine (see notes at end of minutes).

Thursday, September 11**Welcome and Brief Statements**

Dr. Carol Spencer, president, San Juan College, spoke first. She welcomed the committee to San Juan College and discussed the vocational programs that San Juan College provides in conjunction with BHP-Billiton, the owner of the coal mines feeding the Arizona Public Service and Public Service of New Mexico (PNM) power plants.

Tony Atkinson, chair, San Juan County Commission, welcomed the committee on behalf of San Juan County and discussed the partnerships the county has entered into with local organizations, local legislators and other communities in San Juan County to promote economic development.

In addition, the county has won several achievement awards in the last four years, and the state health complex office is near completion. The county encourages growth, but is aware of the stress effects of that growth on the local infrastructure.

Bill Standley, mayor of Farmington, welcomed the committee to Farmington and noted that his town was designated as a metropolitan statistical area (MSA) because of the growth of the community. New investment in the community has been notable. Extractive industry has invested \$900 million in Farmington, and there is \$850 million in retail and support services investment. The lifestyle and livability of Farmington is clearly attractive to new residents. He also noted that when the Desert Rock electric generating facility is operational, it will bring an additional 2,500 jobs to the area, which will require housing and other supporting businesses.

Part of the attractiveness of the community is also the five-star golf course that is rated fourth in the country. He reminded the committee members that there will be a luncheon at the civic center at noon in remembrance of the events of 9-11.

Mayor Standley also noted that of the golf course's annual 60,000 tee times, about 50 percent were taken by local residents and 50 percent by visitors from out of town. The community also offers fly fishing. Representative Taylor commented on golfing barefoot.

The ethnic composition of enrollment at the San Juan College campus, according to Dr. Spencer, is 24 percent Native American and 11 percent Hispanic. The remainder are predominantly Anglo. The school is receiving \$1.5 million from the federal government for Native American enrichment programs. The nursing program is growing. She noted that a bridge on the Bloomfield highway is being replaced to accommodate school vehicles. It is an old trestle bridge that crosses Largo Canyon, which is a very wide arroyo. Heavy equipment and other large trucks will be banned from the bridge. The construction project could cost up to \$20 million. Main Street traffic is also getting very heavy, and more funds are expected to help relieve congestion on that road.

Chairman Atkinson discussed the need to change terms of county commissioners to three years rather than two. He then noted that the county had issued \$17.4 million in revenue bonds to develop a new district court complex, including two new court buildings, the district attorney's office and a centralized crime unit building. No tax increase was needed to repay the bonds. The Desert Rock electric generating facility will be built using industrial revenue bonds.

Mayor Standley noted that there will be a review of the bridge and animal shelter in about one week. Both the county and Farmington are in support of opening Desert Rock.

Local Tax Base

Rob Mayes, city manager, Farmington, and Andy Mason, financial officer, Farmington, spoke about the dependence of Farmington on gross receipts taxes. They discussed their desire to maintain current tax policy to preserve the revenue of the city.

Kathy Lamb, assistant financial director, Aztec, noted that the population of Aztec is 7,000. There are 18,000 people in the service area of Aztec. Its gross receipts tax is the highest in the county. Aztec's general fund is 100 percent dependent on gross receipts taxes. The city is currently tapping into reserves to cover expenses. Ms. Lamb said that transportation is one of the greatest expenses of the city. Maintenance, gas tax and infrastructure costs are high, and there is insufficient money to meet those needs. Many of the energy industry offices are located east of Aztec and travel through Aztec to get to their field locations, causing great wear and tear on the infrastructure used. There is an arterial route planned to divert this traffic, but the money was not in GRIP II. The heavy volume of large trucks traveling through the city causes structural damage to buildings from the constant vibration. The arterial road would eliminate this problem.

The capital outlay tax has provided funds to complete a new domestic water reservoir. Additional funding is needed for water and wastewater delivery and treatment.

Keith Johnson, city manager, Bloomfield, and Kevin Rodolph, financial manager, Bloomfield, stated that Bloomfield, unlike Aztec, is in great financial condition because of the energy boom. Oil and gas production is up, and people are employed by those companies. Bloomfield's wastewater plant is entering into its phase 2 of construction. The police department

is expanding to add a court and police department complex. The fire department is building a new station. Bloomfield is keeping up with infrastructure replacement. The town is helping developers to develop acreage from the Bureau of Land Management for an industrial park. The gross receipts tax is 7.5625 percent, the second highest in the county. All five increments of local gross receipts taxes allowed have been enacted.

Property tax rates in Bloomfield provide only \$450,000 of a total general fund budget for the town of \$8.575 million. Most of the gross receipts are from one business, which is a wholesaler of oil and gas equipment. An increase of 125 percent in gross receipts revenue has occurred over the last few years. Mr. Johnson is concerned that the new pit rules will have a major negative effect on the gross receipts of Bloomfield's greatest gross receipts tax contributor. Right now, Bloomfield is at maximum capacity for general obligation bonds. Eight to 12 million dollars are needed to keep up with the infrastructure needs of the community.

Keith Johns, county executive officer, San Juan County, and Tasia Young spoke next. They stated that San Juan County has been identified as the number two "up and coming" community in the nation. Right now, 22 bridges and roads are really stressed because of the heavy use by large vehicles. They noted that damage to a road made by one 18 wheeler is equal to that done by 32 cars. Nitrates are being found in the rivers, most likely from septic systems. The county is trying to convert septic systems to sewer systems. So far, three increments of one-eighth percent county gross receipts tax have been imposed. Also, the one-eighth percent environmental gross receipts tax has been imposed. This does not come close to covering the solid waste budget. A subsidy of \$600,000 is needed to cover the revenue deficit for the solid waste facilities in the county. A suggestion was made by a committee member that the county should look into using the county fire protection funds for salaries and benefits and free up other county resources for operations and capital costs. Changes to the local gross receipts taxes are needed, and one change might be to allow the hospital gross receipts tax for operations and maintenance. Also, the county would like to see the emergency services gross receipts tax amended to allow the revenue to be used for capital in addition to operations.

Tasia Young, legislative liaison, New Mexico Association of Counties, explained that property taxes comprise more than 55 percent of San Juan County revenue. Gross receipts taxes provide 43 percent of the county's revenue. There are two taxes that no county has imposed: the quality-of-life gross receipts tax and the spaceport tax. The county correctional gross receipts tax will be introduced to increase from an authorized one-eighth percent increment to a one-half percent total tax. But in smaller counties, even if the authorized gross receipts increments are adopted, these would not provide adequate revenue to operate the county. An ongoing problem that counties face is the requirement that they house, at their own expense, offenders awaiting trial on state charges. This is a \$30 million problem. Also, it is necessary that the requirement that all increments of local gross receipts tax that are authorized be imposed before a county can impose the county capital outlay gross receipts tax be changed to allow imposition of the capital outlay gross receipts tax. Other issues mentioned were the use and distribution of payment in lieu of taxes funding from the federal government and sole community provider provisions regarding hospitals.

Bill Fulginiti, executive director, New Mexico Municipal League, provided the last comments of this panel. He noted that the "Big Mac" tax reduction made in the early 1980s

helped cities by authorizing imposition of the occupancy tax (lodger's tax) and providing for a distribution of state gross receipts tax back to the local governments. The state gross receipts tax distribution was decreased in some lean budget years to 1.225 percent, but will be increased back to the 1.35 percent originally intended. There used to be a local option gasoline tax, but that was included in the state tax and is now distributed back to municipalities. In addition, cigarette taxes used to be local taxes, but are now imposed only at the state level, and a percent is distributed back to the municipality. He seconded the comments that Ms. Young made about the requirement to impose the general purpose gross receipts increments before a municipality can impose a capital outlay gross receipts tax. He requested that the legislature consider changing that provision. The quality-of-life increment should be converted to something more useful. The largest three cities in the state collect 95 percent of the state's gross receipts tax revenue.

It is fairly clear that San Juan County has not yet seen drastic changes in its economy due to its reliance on oil and gas production.

Coal in San Juan County — BHP Billiton

Glenn Kellow, president and chief operating officer, BHP-Billiton New Mexico (BHP), gave some background on the operations of the company in San Juan County. There are three mines operated by the company in San Juan County: the Navajo Mine, a mine-mouth operation with Arizona Public Service Company's Four Corners Power Plant; La Plata Mine, which is scheduled to close soon; and the San Juan Mine, which feeds PNM's San Juan Generating Station. Programs are in place to develop the skills of Native American and other San Juan County residents so that they are able to be placed in jobs at the mines. The courses are offered through San Juan College. The skills development courses offer training in mechanical, electrical and welding trades. Mine safety is taught.

The underground mine visited by the committee members and staff on Wednesday, September 10, has introduced technology that has never been used previously in the United States. When La Plata Mine closes, the facilities will be donated to San Juan College to be renovated into an industrial park.

Over 50 percent of United States energy production is from coal. Much coal is exported to India and other countries. The United States military is working on technology to convert coal into gasoline, diesel or jet fuel. It takes two years to obtain a permit to mine coal. BHP will seek to remove the surtax from coal and is undertaking a comparative review of relative tax burdens placed on extraction and sales of coal by states where coal is mined. There is a need to update the study made 10 years ago.

Tax Issue Review

Secretary of Taxation and Revenue Rick Homans described the outreach program that is being used to reach residents of New Mexico that were not required to file tax returns. A broad media campaign is planned, filing assistance will be provided and special efforts will be made to find those residents who are difficult to identify. The handout can be reviewed for more detail of this discussion.

The legislative proposals prepared for the Taxation and Revenue Department (TRD) were discussed. One provides cleanup of some issues that need to be addressed in the Tax

Increment for Development Act. The second bill discussed was the personal income tax simplification proposal. These both have been presented to the committee previously this year. The next bill reorganizes the provisions that allow the TRD to disclose taxpayer information to another agency and that allow disclosure of information regarding taxes paid by businesses and residents of tax increment development districts. Penalties for unauthorized disclosures are tied to Section 7-1-76 NMSA 1978. Another proposal deals with electronic filing of corporate tax returns, among other administrative changes, regarding rates of penalties and interest. This proposal provides for a waiver of penalties and interest in the event of a public emergency declared due to terrorist activity. The time in which to file tax protests would be increased from 30 to 90 days, and other changes supporting that change in the time allowed to file a protest are included in another proposal under consideration by the TRD. Another proposal would modify corporate income tax withholding provisions to require withholding to be submitted on four dates throughout the year rather than three. Filing requirements of film entities and other pass-through entities are also clarified in the proposal that includes the withholding changes. Finally, the cigarette and tobacco taxes would be modified to enable enforcement of contraband cigarette laws.

Master Settlement Agreement

Dave Thomson, assistant attorney general, discussed the impediments to enforcement of some of the provisions of the Master Settlement Agreement (MSA) entered into by New Mexico and other states with tobacco manufacturers selling tobacco products in the country. There is a concern among participating manufacturers that have signed on to the MSA that contraband cigarettes are an increasing problem and that all cigarettes in New Mexico should carry a stamp on the pack to be sold. He also discussed the increase in internet sales of cigarettes. Little cigars have caused an evasion of appropriate taxes due to a dispute over the definition of what a little cigar is versus the definition of a cigarette. The committee was not requested to take any action on the information presented by Mr. Thomson. The handout given by Mr. Thomson did note that increased resources will be needed to prosecute, investigate and audit suspects.

Sithe Global — Desert Rock Power Plant Update

Nathan Plagens, vice president, Desert Rock Power Plant, described how the plant, which is being developed by Sithe Global, will be a pulverized coal-powered electric generating plant (see Mr. Plagens' handout). Sithe Global is a privately held, independent power company with interests in solar, hydropower and palm oil plantations, which is a fuel that may replace crude oil in power or heat generation.

The Desert Rock Power Plant will consist of two 750 milliwatt ultrasuper critical coal-fired units that will be constructed at a cost of \$2.8 billion. Sithe Global will not construct the twin coal-fired plant, but will act as "owner-engineers" on the project. The final environmental impact statement is expected to be complete by November 2008. Plans now are to break ground for the coal-fired generating plant by September 2009. The expected output of sulfur dioxide emissions are 0.06 pounds per million British thermal units. It will be an integrated gasification combined cycle plant, which is the best technology in common use today. There will be no burden on the San Juan River, according to Mr. Plagens, and the company will provide training for workers. There will be 1,000 workers for the four years of construction; then, the power plant will employ 200 people annually. In addition, there will be 200 additional mining jobs at the BHP Navajo Mine when it expands its open pit to accommodate the needs of the Desert

Rock Power Plant. San Juan County will receive payment in lieu of taxes from Desert Rock's construction, paid for by industrial revenue bonds issued by the county and purchased by Sithe Global. There is no plant of this type of technology in operation in the United States yet. It is a German design, and it is in use in Europe. An air permit was issued on July 31, 2008. Sithe Global is anticipating that all appeals of permit applications will be complete by July 1, 2009. The plant's investment for environmental controls is estimated to require a \$400 million to \$500 million expenditure. The emissions tower will be 900 feet in height.

Recess

The committee recessed at 4:49 p.m.

Friday, September 12

The committee was reconvened by Representative Sandoval at 9:10 a.m. Representative Strickler greeted the committee. Jason Sandel brought greetings from his father and the community as a Farmington city councilman.

Oil and Natural Gas Pricing and Price Fluctuations

Tom Clifford, research director, New Mexico Tax Research Institute, presented background on pricing and price fluctuations of oil and gas. Mr. Clifford noted that there is inelastic demand for oil and gas. This means that it is hard to adjust the volume used, and demand follows use. However, supplies of oil and gas can be interrupted by things like political instability and natural disasters. He recapped that demand is fixed, whereas supply is volatile. To change the behavior of consumers, a drastic change in price must occur; that is, the price must rise considerably to decrease use. This is why stockpiles are needed to help maintain supply at a constant, reliable level (see Mr. Clifford's handout).

In the long term, the outlook for demand for oil and gas is predicted to increase. The growth rate of four percent is a robust growth for the oil industry. Because surplus capacity is limited, the price must control the demand. Only "market destruction", or a price that is so high that it will destroy demand, will decrease demand. Speculators who buy and sell futures of oil can insert a great deal of risk into the market.

Mr. Clifford tried to distinguish between speculators and hedgers, but noted that the difference is not clear. This is because the terms include the motive of the investor, and this is not an objective status that can be objectively evaluated such as terms like "commercial" or "noncommercial" trader. Mr. Clifford said that the market has recently seen large numbers of traders, the number of whom doubled from 2004 to 2008, who have caused a price bubble to occur. Eventually, the market will correct itself, and the "bubble" will "burst", and the prices will fall.

Speculators follow a market increase; they do not predict or precede an increase. Speculators have grown in number most quickly in the last four years. If the price is too high, inventories will deplete and will no longer be built. No one wants to hold high-priced oil in inventory for use during times when prices are more modest. Inventories will not be rebuilt until the demand decreases. Mr. Clifford does not believe that speculation contributed to price increases that have occurred over the last few years. He believes that prices will settle at between \$25.00 and \$100 per barrel.

Ongard System has shown that when there is a downward trend in production, there is an upward trend in prices. Production has stabilized at about 60 million barrels per year.

Natural gas is declining in production in the state at one to two percent per year. This is as expected. When the federal tax credit for producing natural gas from coal seam formations stopped, there was not an equal decrease in natural gas production. In the last few years, there have been three spikes in natural gas production. One was during the California energy crisis. Gas prices are more volatile than oil. Gas pricing at the Henry Hub is usually higher than San Juan pricing. However, since January 2008, the price is less reliably below San Juan crude prices. Since July, New Mexico spot prices have decreased with the Henry Hub prices. He noted that the Ongard price currently is outperforming the spot price of natural gas. Revenue from natural gas can easily fall more than three percent in one year. He reminded the committee that each \$.10 change in the price of natural gas equates to a \$1.00 change in the revenue of the general fund. Oil and gas revenue constitutes 20 percent of the general fund revenue. State revenue tends to move together with fluctuations in oil and gas revenue. It is of concern to the economists who forecast state revenues that oil and gas prices can fluctuate so radically in such a short time. It is very hard to forecast prices and rely on those numbers for revenue projections. Higher oil and gas prices tend to generate high nonrecurring revenue and, after a few cycles of having high nonrecurring revenue, people mistake it for recurring revenue.

Hedging is not recommended for state use. The state could lose revenue if prices rise and the state buys futures at that higher price and then the price falls. Hedging normally is used to manage revenue forecasts, manage reserves and manage recurring and nonrecurring revenue. Adjustments to forecasts were conservative and appeared too small or low in the rising price market. It might be more helpful for forecasting if a range of oil and gas revenue projections could be used. The revenue forecast now is above the NYMEX level of \$8.45 per 1,000 cubic feet (mcf) and is projected at \$9.60 per mcf. Oil on the NYMEX is predicted at \$111.21 per barrel, but the consensus estimate is \$122 per barrel.

Reserves must be maintained at a fairly high level to manage the risk found in such a volatile market environment. Ten percent of the appropriated operational budget is the minimum level of reserves that must be maintained. If other methods of managing the state's revenue response to volatility are not used, then reserves must be maintained at an even higher level. The level of recurring expenditures that are optimally to be maintained into the future should be identified and adhered to when setting the operating budget of the state. The state needs to adopt a plan explicitly setting aside five percent or some higher level of budget reserves and identifying reserves that will cover a three percent or greater error in the forecast so that falling revenue can still support the budget approved.

Field Trip to Gas Well

The committee was taken to a gas well situated on San Juan College's property.

Building Code Adopted by Reference

Lisa Martinez, director, Construction Industries Division (CID), Regulation and Licensing Department (RLD), requested the committee to consider the need to alter the authorization set forth in House Bill 219 adopted in 2007. Section 3-17-6 NMSA 1978 authorizes municipalities to adopt by reference to its title an administrative code; air pollution

code; building code that includes provisions for plan review, permitting and inspections for general, electrical, mechanical and plumbing construction; and various other codes. Ms. Martinez and Michael Arellano and Chris Williams (both of whom are building inspectors) noted that though there are inefficiencies in the current inspection system, these problems cannot be corrected by adopting codes that do not address the needs of the inspectors. New Mexico has limited inspection resources and should be looking at a statewide system that allows inspectors to be sent to any county or municipality in the state to conduct inspections. They asked the committee to consider repealing the authorization for municipalities to adopt building codes by reference to their titles and to assure that inspectors are permitted to cross jurisdictional lines to make inspections and to ensure that they are completed in a timely and uniform manner.

Adjournment

The committee adjourned at 12:13 p.m.

September 10, 2008 Field Trips

San Juan Generating Station Tour

The committee members were picked up at 8:30 a.m. by BHP and PNM. The first stop was the PNM San Juan Generating Station.

PNM gathered the group together at 9:15 a.m. to discuss the power plant. The presentation was made by John Myers, PNM vice president for power generation, Jim Ferland, senior vice president for utility operations, and Russel Hoffman, San Juan Generating Station plant manager. Environmental improvements that have been made to the plant over the last several years were described. The state regulations have required that the plant retrofit equipment for removal of sulfur dioxide, nitrogen oxides, mercury and particulates. Carbon dioxide is not being removed because there is no current technology that can be used to retrofit the plant to remove this compound. The upgrades will cost approximately \$35 million. Mercury is being removed by use of activated carbon injection. This process is expected to remove up to 95 percent of the mercury.

There are four generating units, and upgrades to units 3 and 4 are now complete. Each unit generates 1,800 megawatts of electricity. It costs \$1 million per day to run each unit to produce 1,800 megawatts of power. Coal is one-third the cost of natural gas, which is one method of replacing coal if for some reason the coal burners are malfunctioning or if coal is unavailable. Each unit is down at least three weeks per year for maintenance. Sixty-five percent of the power is sold in New Mexico, with the remaining 35 percent sold in Arizona, Utah or other states. Today, it would cost \$4.5 billion to build a similar facility. The price of the needed inputs has doubled or tripled over the last 10 years. There was a discussion of the costs of purchasing power to replace generation capacity when part of the plant shuts down, either because of scheduling or unexpected events.

San Juan Generating Station has a payroll of \$25 million annually and pays \$9 million in payroll taxes and benefits. In addition, PNM pays \$6.3 million in property tax on the plant. Thirty-one million dollars is paid by PNM in royalties, and \$3.7 million is paid to the Navajo Nation in royalties and taxes. Thirty-five to 45 percent of the work force of the San Juan Generating Station are members of the Navajo Nation. The environmental upgrades added \$33

million to the San Juan County economy in wages and had a total impact on state and local taxes of \$32.8 million. A large multiplier effect was experienced by the City of Farmington, the county and the state from the wages paid for installing the improvements.

Seven tons of coal are required to produce 1,800 megawatts per year. This produces 1.4 tons of ash from the coal used for the plant. Some of the ash can be sold for road base stabilization; however, the amount sold is about 200,000 tons per year. About 60 percent of PNM's needed power for New Mexico is produced by the San Juan Generating Station. This is about 765 megawatts per year. Right now, about 23,000 acre-feet of water is purchased from the Jicarilla Apache Nation for plant use annually. The plant is planning to reduce this water consumption by about 15 percent over the next five years. Water now is used for cooling and producing steam for turbine operations. The plant is considering using about 5,000 acre-feet of gray water from Farmington annually to replace fresh water.

The committee members were then taken on a tour of the plant to see the generators, turbines and other equipment in the plant. It was warm, wet and noisy. Hard hats were issued. After the tour, the committee moved on to the mine.

BHP Long Wall Mine Tour

The committee gathered at about 1:00 p.m. for a safety briefing and to be fitted for overalls and other clothing and shoes for the trip into the BHP underground San Juan Coal Company. Chad Pfeiffer, Nick Chavez and Loni Mascarenas provided the committee with all that was needed to tour the mine. The group was divided into smaller groups, and each was assigned to a driver. The drivers took members several miles into the mine, at which point the groups got out of the trucks and walked to the area where mining was active. The mining is predominantly done by a machine that cuts about one to three feet into the wall of the mine for a mile. Then the miners load the cut material onto a conveyor belt, and it is transferred out of the mine. The mine is dark and wet and, when the coal is being cut, noisy. The equipment was not cutting the wall of the mine when the group was touring. Everyone got wet, very black and tired. This underground mine seemed safe and fairly well ventilated. There were not very many people working in the mine. It was difficult and uncomfortable work around large, dangerous machinery. The safety record of the mine is very good, although one worker died in the mine recently. Structurally, the mine seems safe from cave-ins and, hopefully, the ventilation is more than what is needed to keep methane or other explosive gases from settling in the deeper or dead-end areas of the mine. It appears that underground mines are not clean, dry and light.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 7

October 2008
Agenda
Minutes (Not Available)

Revised: October 14, 2008

TENTATIVE AGENDA
for the
FIFTH MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

October 16-17, 2008
EXPO New Mexico
Fine Arts Gallery
Albuquerque, New Mexico

Thursday, October 16

- 10:00 a.m. **Call to Order**
 —Representative Edward C. Sandoval, Chair
- 10:05 a.m. **New Mexico State Fair Update**
 —Judith Espinosa, Executive Director, EXPO New Mexico
- 11:00 a.m. **Taxation and Revenue Department Legislative Proposals — Options Under Consideration**
 —Dona Wilpolt-Cook, Deputy Secretary of Taxation and Revenue
 —Phil Salazar, Director, Audit and Compliance Division, Taxation and Revenue Department (TRD)
 —Ken F. Ortiz, Director, Motor Vehicle Division, TRD
- 12:00 noon **Lunch**
- 1:30 p.m. **Property Tax Options**
 —Jim Nunns, Tax Policy Director, TRD
 —Tom Clifford, Ph.D., Research Director, New Mexico Tax Research Institute
 —Jim O'Neill, Consultant
 —Karen Montoya, County Assessor, Bernalillo County
 —Domingo Martinez, County Assessor, Santa Fe County
- 3:00 p.m. **Public Comment**

3:45 p.m. **Wholesale Liquor Industry Issues and National Liquor Excise Tax Comparison**
—Fred O'Cheskey, Lobbyist, New Mexico Alcohol Beverage Wholesalers Association

5:30 p.m. **Recess**

Friday, October 17

9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

9:05 a.m. **Bernalillo County Local Gross Receipt Tax Issues**
—Alan Armijo, Chair, Bernalillo County Board of County Commissioners
—Thaddeus Lucero, County Manager, Bernalillo County

10:15 a.m. **Wine Industry Update**
—Dan Weeks, Lobbyist, New Mexico Wineries

11:15 a.m. **PNM Electric Rate Increase**
—Ron Darnell, Vice President, Regulatory Affairs, PNM
—Sayuri Yamada, Governmental Affairs, PNM

12:00 noon **Lunch**

1:00 p.m. **Corporate Income Tax Incentives Sunset Extensions**
—Jami Grindatto, Manager, New Mexico Corporate Affairs, Intel
—Dan Najjar, Attorney, Intel

1:45 p.m. **Second Chance Center**
—Joy Westrum, President, Second Chance Center
—Doug Eberhardt, Graduate, Second Chance Center
—Rick Pendery, Director, Second Chance Center

2:45 p.m. **Downs at Albuquerque Update and Tour of the Downs**
—Don Cook, General Manager, Downs at Albuquerque

4:00 p.m. **Adjourn**

**REVENUE STABILIZATION AND
TAX POLICY COMMITTEE**

Section 8

**November 2008
Agenda
Minutes**

Revised: November 6, 2008

**TENTATIVE AGENDA
for the
SIXTH MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**November 6-7, 2008
Room 322, State Capitol
Santa Fe**

Thursday, November 6

- 9:00 a.m. **Call to Order**
 —Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Taxation and Revenue Department Legislative Proposals — Options Under Consideration**
 —Rick Homans, Secretary of Taxation and Revenue
 —Jim Nunns, Tax Policy Director, Taxation and Revenue Department (TRD)
 —Kenneth F. Ortiz, Director, Motor Vehicle Division, TRD
- 10:30 a.m. **Special District Review**
 —John Gallegos, Chief, Bureau of Budget and Finance (BBF), Local Government Division (LGD), Department of Finance and Administration (DFA)
 —Isaac Montoya, Executive Analyst, BBF, LGD, DFA
 —Jim Nunns, Tax Policy Director, TRD
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Residential Property Tax — Disclosure Upon Transfer**
 —Karen L. Montoya, County Assessor, Bernalillo County
 —Tasia Young, Lobbyist, New Mexico Association of Counties (NMAC)
- 2:15 p.m. **Commercial Property Valuation Increase Limit Proposal**
 —Dr. Charles Walker, DDS, Commercial Property Owner, Bernalillo County
- 3:15 p.m. **Northern Santa Fe County Property Tax Issues**
 —Josh Crawford, Taxpayer
- 4:15 p.m. **Nonresident Employee Allocation of Wages for Tax Purposes**
 —Peter Mallery, Lobbyist, Verde Realty
- 5:15 p.m. **Recess**

Friday, November 7

- 9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Corporate Income Tax Incentive Changes**
—Jami Grindatto, Manager, New Mexico Corporate Affairs, Intel
—Dan Najjar, Attorney, Intel
- 9:40 a.m. **Improving Effectiveness of Tax Incentives**
—Richard Anklaam, President and CEO, New Mexico Tax Research Institute
- 10:30 a.m. **Health Care Provider Gross Receipts Tax Exemptions**
—Linda Sechovic, New Mexico Health Care Association
—Jim Nunns, Tax Policy Director, TRD
- 11:15 a.m. **Local Government Legislative Priorities**
—Bill Fulginiti, Executive Director, New Mexico Municipal League
—Paul Gutierrez, Executive Director, NMAC
- 12:00 noon **Working Lunch**
- R and D Tax Credit Extension**
—Fred Mondragon, Secretary of Economic Development
- 12:30 p.m. **Gaming Control Board Proposed Legislation**
—David Norvell, Chair, Gaming Control Board (GCB)
—Don Dutton, Member, GCB
—Frank Baca, General Counsel, GCB
- 1:30 p.m. **Wellness in the Workplace Tax Credit**
—Jim Campbell, Wellness Experts
- 2:30 p.m. **Alcoholic Beverage Tax Issues**
—Gary King, Attorney General
—Stuart Bluestone, Consultant, Attorney General's Office (AGO)
- 3:30 p.m. **Adjourn**

**MINUTES
of the
SIXTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**November 6-7, 2008
Room 322, State Capitol
Santa Fe, New Mexico**

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:17 a.m. on Thursday, November 16, 2008, in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano (11/7)
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Absent

Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Sen. James G. Taylor

Designees

Sen. Cisco McSorley
Rep. Henry Kiki Saavedra

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubestic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Steven P. Neville
Rep. Andy Nunez
Rep. John Pena
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

(Attendance dates are noted for those members not present for the entire meeting.)

Guests

Rep. Janice E. Arnold-Jones

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)

Doris Faust, Staff Attorney, LCS

Cleo Griffith, Drafter, LCS

Tim Crawford, Historian, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, November 6**Taxation and Revenue Department (TRD) Proposed Legislation**

Rick Homans, secretary of taxation and revenue, Jim Nunns, tax policy director, TRD, and Ken Ortiz, director, Motor Vehicle Division (MVD), TRD, appeared before the committee to discuss the draft legislation that the TRD anticipates presenting in the 2009 legislative session. Secretary Homans and Mr. Nunns discussed the following bills:

1. Personal income tax simplification. This was introduced in 2008 but was unable to make it through the senate before the end of the session. The tax tables will be changed slightly.
2. Electronic payment of taxes. This bill applies to gross receipts tax reporting of large businesses beginning in the 2009 tax year or in the second year that a business is in operation if the business has estimated taxes in the qualifying amount of greater than \$25,000 in the prior tax year. The qualifying amount decreases to \$10,000 over the three-year period following the effective date of the bill. The monthly base filing requirement level for reporting combined reporting system taxes will increase from \$200 to \$300. The TRD will be able to serve warrants of levy upon financial institutions electronically. The secretary will be given limited authority to delay accrual of interest owed for people in an area that has been declared a disaster by either the governor or the president. Third-party payers, such as payroll services, will be required to pay electronically.
3. Tax Administration Act (TAA) amendments. This bill allows disbursements of attorney fees for all tax litigation. It clarifies the tax rate for food and medical hold harmless distributions to large municipalities and counties. It extends the protest period from 30 days to 90 days and clarifies and updates the rules governing protests and hearings. The bill also raises the threshold for attorney general review of refunds and abatement. The language for awarding of costs and fees to a taxpayer is broadened. And, finally, the bill extends the list of taxes that can be subject to setoff.

4. Confidentiality. Section 7-1-8 NMSA 1978 is rearranged in this bill by grouping exceptions to confidentiality by the type of entity receiving the tax information. Some additional entities are included as exceptions. Definitions, clarification of language and changes conforming wording to other sections also are included in the bill.
5. Withholding changes. The Withholding Tax Act and the Oil and Gas Proceeds Withholding Tax Act and related provisions are amended in order to simplify withholding for withholding agents; to simplify tax filing and payment for income recipients by removing the need for estimated payments on covered income; and, finally, to improve compliance with withholding taxes. The changes also are devised to assure consistent reporting and to require certain employers to file quarterly withholding information returns electronically. Film performing artist entities would be required to withhold. It is anticipated that the changes made in this bill will increase collections by 20 percent. It was noted in comments that employing withholding on resident oil and gas royalty recipients was in contravention of the agreement made at the time that the nonresident withholding was implemented.
6. Cigarette Tax Act and Master Settlement Agreement improved compliance. Certain definitions are conformed to improve enforcement and compliance. Distributors are allowed to sell unstamped cigarettes to one another. The period for stamping cigarettes is extended. Language in the Cigarette Tax Act and Tobacco Products Tax Act is clarified. The bill applies the tobacco products tax to samples and exempts tribal sales.
7. Tax increment development district (TIDD) changes. An omission is corrected by changing the gross receipts tax increment calculations and conforming the reporting to other tax reporting. The bill updates the list of gross receipts taxes that can be dedicated to a TIDD. In addition, rules for distributions from a gross receipts tax increment debt service reserve account are included in the draft.
8. Taxation and Revenue Department Act. The Tax Fraud Investigations Division will be added to the list of divisions of the TRD. The TRD will enter the state into the state income tax levy program, meaning the TRD will begin to accept electronic tax levies from the Internal Revenue Service (IRS) for a fee, and the TRD can charge a fee to the IRS for levies from the state. The bill appropriates an amount equal to those fees to the department.
9. Unclaimed property. This bill caps the fee that can be claimed by a person who locates a person who has property on the unclaimed property list to 10 percent of the value of the unclaimed property.
10. Child daycare credit. This bill expands the child daycare credit and increases the child daycare credit maximums. Income eligibility is raised in the bill, and the credit would phase out at twice above the New Mexico minimum wage. The rules for obtaining the credit are also simplified.

Mr. Ortiz discussed the motor vehicle bills.

11. (MVD #1) Tax identification number elimination for ID use. For some foreign nationals and others who do not have a social security number, the use of a tax identification number has been an accepted method of proving identity. However, the federal government has issued warnings that tax identification numbers in no way are reliable proof of a person's identity. Now passports and other special documents from the Mexican government, called Matricula Consular, are the documents that may be used for identification by a foreign national.
12. (MVD #2) Alternative means of renewing a driver's license. Electronic means of renewing a driver's license are authorized on a one-time basis by this bill.
13. (MVD #3) Reduced fees for renewing a driver's license at 21. All driver's licenses issued to persons under the age of 21 years will expire on the person's twenty-first birthday and have to be renewed. This bill will prorate the fees of the licenses so that a person does not have to pay full fees for a license that lasts less than the full length of the term of the license. A five percent discount from the fee is applied to fees paid by mail, on the internet or by telephone.
14. (MVD #4) Authority for telephonic hearings. This draft allows, at the discretion of a hearing officer or law enforcement officer, telephonic appearance at an implied-consent hearing for revocation of a driver's license.
15. (MVD #5) School attendance and academic proficiency required for provisional driver's licenses. A person who is between 15 years and 15 years and six months will be required to demonstrate school attendance and academic proficiency to the eighth grade level in order to obtain an instruction permit to allow that person to drive under the limited circumstances permitted by the Motor Vehicle Code, Section 66-5-5 NMSA 1978. Persons 13 and 14 years of age may not obtain a license restricted to the operation of a motorcycle not in excess of 100 cubic centimeters displacement.
16. (MVD #6) Commercial vehicle drivers. Changes to the New Mexico Commercial Driver's License Act are to clarify the term "conviction" as it applies to commercial vehicle drivers. This bill is basically cleanup and technical changes. There are some penalty changes also. Masking prohibitions are included in this draft so that they apply to commercial vehicle drivers only.

Special District Taxation Data

Mr. Nunns, John Gallegos, chief, Bureau of Budget and Finance (BBF), Local Government Division (LGD), Department of Finance and Administration (DFA) and Isaac Montoya, executive analyst, BBF, LGD, DFA, presented information on special districts to the committee. Mr. Gallegos gave a brief explanation of the number of special districts and the amount of property-taxing authority that they may impose. His handout provided information on the remaining taxing authority in these districts.

Mr. Montoya further discussed the chart provided by the BBF noting which special districts have imposed property taxes and which have authority remaining. It was suggested by Representative Arnold-Jones that the application of yield control be specified in statute when a district is created, which would eliminate current confusion.

Mr. Nunns discussed special districts that have the authority to impose gross receipts taxes. He also provided a handout that listed districts and noted which districts had imposed gross receipts taxes and which districts have some capacity left to impose. He discussed the status of TIDDs and noted that the distributions to Mesa del Sol are now increasing. It is hoped that this trend will continue, which will indicate that development is continuing. Regarding SunCal, the State Board of Finance (SBF) authorized state gross receipts taxes to be dedicated to the TIDD, but no money is being distributed. So far, SunCal has not formed a district board, and therefore the bond fund has not been established. No notice from the SBF has yet been given on the magnitude of state gross receipts tax dedication. Other TIDDs that are on the horizon are Verde Realty, Winrock, Las Cruces downtown and Farmington. So far these are only under discussion. Mr. Nunns also presented a handout regarding tribal agreements with the state that allocate gross receipts taxes. The Jicarilla Apache Nation has a larger amount of revenue that requires a gross receipts distribution from the state because its agreement is in regard to severance taxes on natural gas and some oil.

Patricia Herrera, TRD, responded to a question from the committee by noting that Santa Fe County could impose up to a one-half percent gross receipts increment but has only imposed one-eighth percent. In response to a question about Mesa del Sol, Mr. Nunns and Norton Francis, chief economist, Legislative Finance Committee, both knew of no bonds that to date have been issued by Mesa del Sol. The expectation is that the TIDD will wait until the revenue stream is more stable before issuing the bonds. Changes expected to be made to the Tax Increment for Development Act to require greater notice to the state of bond issues, etc., will only apply to the districts now coming into existence. In response to a question by the committee, Mr. Francis noted that it would be only speculation to assess the positive economic impact of Mesa del Sol at this point. However, it can be extrapolated that economic activity at Mesa del Sol must be in the vicinity of \$25 million to \$30 million.

Residential Property Tax — Legislative Proposals

Tasia Young, lobbyist, New Mexico Association of Counties (NMAC), and Karen Montoya, county assessor, Bernalillo County, and chair of the assessors association, reviewed the real estate disclosure proposal that the counties plan to present to the legislature in January. The bill requires Realtors, title insurers and sellers to disclose to a potential purchaser the property tax that would be due on the property to be transferred based on the sales price of the property. Tracy Langford, Realtor's Association, noted that lenders cannot be included because online lenders are not regulated by the state. It was suggested by the committee that the disclosure be in writing. Discussion ensued regarding the limited remedy that this bill will provide, as the three percent increase in valuation will still apply to nonsellers of residential property. Denise Terrazas, director, New Mexico Land Title Association, working with the Title Guaranty and Insurance Company, Los Alamos, stated that the title insurers felt that this was too much liability for title insurers to agree to, especially because title insurers are under scrutiny at this time and

could lose their immunity from negligence in researching titles. If there were a formula that could be used to determine potential property tax, that would ease the concern of the title insurers. The Realtor's Association noted that not all purchasers or sellers use Realtors and therefore some transfers would fall through the cracks. Requiring disclosure at closing is too late; the tax should be disclosed before the price is decided upon. This might mean that title insurers do not have a role in disclosure. The title insurers wanted clear language that affixed no penalty to an error made in calculating the potential tax.

The second bill presented was an appropriation to the Property Tax Division of the TRD to purchase computer-assisted mass appraisal (CAMA) systems for each county in the state. It requested an appropriation of \$6 million. Statewide use of CAMA technology would provide greater uniformity among counties in valuations and provide a tool to counties to make their process of valuation more professional and accurate.

The third bill would change the yield control formula and define some key terms. The NMAC board has not approved this bill as yet. Discussion of the details would have to be delayed until December, when Jim O'Neill could explain its content.

Commercial Property Tax Limitation

Dr. Charles Walker, Albuquerque, spoke of the dramatic increases he has experienced in property taxes on his commercial property. Taxes have increased as much as 300 percent in one year. Don Morgan, who accompanied Dr. Walker, agreed that commercial property taxes in Bernalillo County had increased substantially. They feel that this is detrimental to business in Albuquerque because it increases uncertainty when projecting fixed costs. For instance, determining rental and lease rates becomes impossible because the tax rates are so uncertain. It is hard to estimate the amount that should be charged for lease or rental rates to cover the costs of the property. The committee was sympathetic to Dr. Walker's concerns.

Northern Santa Fe County Tax Issues

Josh Crawford discussed the 300 percent increase in his property taxes in 2007 for the property tax year of 2006. He questioned the use of aerial photography to determine use of property for valuation purposes. He also felt comparable structure techniques should be located in the same general area as the property being valued and comparables from three or four miles from the site are not really comparable. He expressed concern that if property taxes continue to rise, then people will not be able to leave property to their children. He also was concerned that the assessors use the highest-valued property in an area as the baseline for comparison.

Domingo Martinez, county assessor, Santa Fe County, responded to Mr. Crawford's concerns by noting that assessors use more than one property to compare values with any particular property being valued. The values of properties used for comparison are averaged to get the value of a property. It was noted by committee members that the property tax protest process should be streamlined and made more accessible for taxpayers.

Nonresident Employee Allocation of Wages for Income Tax Purposes

Peter Mallery, lobbyist, Verde Realty, and Claude Billings, Verde Realty, presented a bill that would provide the authority for a business within 20 miles of the international border to identify its workers who live in an adjacent state (in this case, Texas) to take a tax credit against the employee's New Mexico income tax in an amount equal to property tax paid in the employee's state of residence for three years while the employee works in New Mexico and is not yet a resident of New Mexico.

Mr. Billings began by giving an overview of the project that Verde Realty is proposing for the Santa Teresa area. His handout describes the project in which Verde Realty is involved.

Mr. Mallery discussed the legislative proposal in detail. He noted that the bill allows an employee of a federal law enforcement agency located in New Mexico to claim a tax credit against the employee's New Mexico income tax for a period of three years in the amount of property tax paid on the employee's principal residence in the employee's state of residence. There is no carry-forward if the out-of-state property tax liability exceeds the New Mexico income tax liability. The "nonresident law enforcement employee tax credit" could be claimed for tax years beginning on January 1, 2010 through tax years beginning no later than December 31, 2019 but for no longer than a three-year period once the credit is claimed. It was thought that most employees would move quickly to New Mexico because property taxes in Texas are so high. The proposal is a negotiating tool to be added to others to entice the federal Department of Homeland Security to bring its border law enforcement facility to New Mexico. It hopefully would attract other businesses also.

Recess

The committee recessed at 4:00 p.m.

Friday, November 7

The committee was reconvened by Representative Sandoval at 9:16 a.m.

Corporate Income Tax Incentive Changes

Dan Najjar spoke to the committee regarding Intel's bill proposal regarding increasing the corporate income tax incentives regarding manufacturing investment credits, Section 7-9A-7 NMSA 1978, and the double-weighted formula for apportionment of corporate income, Section 7-4-10 NMSA 1978. He asked that the bill be removed from consideration until Intel has the opportunity to speak to the governor's staff regarding the substantive changes that are requested.

Improving Effectiveness of Tax Incentives

Richard Anklaam, executive director and president of the New Mexico Tax Research Institute (NMTRI), provided a very thorough handout on the evaluation of tax incentives and possible drafting improvements that would help make tax incentives more transparent. He stated that it is estimated that tax credits cost the state about \$80 million in revenue. He reiterated that there are five principles of good tax policy:

1. adequacy;

2. equity;
3. efficiency;
4. simplicity; and
5. comprehensiveness.

Mr. Anklaam noted that incentives are deviations that policymakers have determined fulfill economic development, social or other state goals. A good tax incentive:

1. is well-reasoned;
2. does not significantly undermine standard tax policy; and
3. requires deviations from standard tax policy to be measured and evaluated.

He discussed the pros and cons of using tax incentives for economic development policy and noted that it is relatively impossible to determine the answer to the question, "But for this incentive, would this business have come to the state?".

Tax credits for other state purposes, according to Mr. Anklaam, are usually to encourage certain behaviors or to fill in areas of the economy that the private market fails to fill. Benefits can usually be targeted because tax policy covers all corners of the economy and benefits can be capped. However, there are little available data to assess the amount of credit to be provided. The state has limited personnel to track these credits and to provide oversight of the use and usefulness of the credits. The tax system becomes more complex with the insertion of these credits. Benefits are limited to tax liability unless the credits are made refundable. In the end, the tax system should not be used as a substitute for the appropriations process.

- Good incentives have the following characteristics:

1. The incentive is needed to reduce an existing tax "disincentive".
2. The incentive includes reasonable caps or sunsets and enables evaluation of the cost of the incentive and the effectiveness of the incentive.
3. The incentive can be used statewide and is not targeted to a region or community in the state.
4. The incentive's proponents have adequate information to assess whether the design of the incentive is effective in fulfilling the need perceived.
5. The incentive is limited in amount, is easily assessed and is small when compared to the benefit derived by the state from the activity targeted with the incentive.

- When developing an incentive, the following questions should always be answered:

1. What are the goals to be achieved?
2. What metrics will be used to determine if the goals are met?
3. How many taxpayers will benefit?
4. Why do the beneficiaries deserve special treatment?
5. Is the total fiscal impact to the state limited?
6. How does the incentive interact with other incentives?

7. How much revenue is being used Per job created? Per job existing?
8. Are there adequate data captured to provide for a full fiscal analysis of the impact of the incentive?
9. Who is bearing the burden of the incentive-caused decrease in revenue if the incentive does not cover its own costs?

- The following are issues that should be resolved in the language of each incentive:

1. What is the "stacking" order of this incentive when combined with other incentives? It should be clear how incentives can be used together or which incentives can only be used in the alternative.
2. Claims processes should clearly state how to claim the credit and how much may be claimed.
3. Preapproval should be completed by agencies other than the TRD, except where incentives can only be used if other incentives cannot be claimed, in which case, the TRD would have to approve the use of the incentive.
4. Deadlines should be clarified, applicability to certain tax years should be clearly stated and, if there are limitations on the periods when an incentive may be claimed, they should be clearly identified.

It might be best to combine existing credits into a "general business credit". Other problems with the tax system should be addressed, including pyramiding of gross receipts taxes.

It is very important that the state's tax base is not squandered in a "race to the bottom", with each state attempting to undercut the tax credits and incentives that are available in other states. It would not serve the state well and would be delivering the control of making New Mexico's tax policy to businesses that might promise to come to the state if the state just adjusts its tax incentives to provide them with more benefit. It is wiser to support the tax policy that best serves the state's needs as a whole rather than to create chaos in the tax system by providing ill-considered or overly specific tax incentives in the hope that a specific business will be attracted to the state.

Fred Mondragon, secretary of economic development, and Mr. Nunns presented a copy of the "Report on Manufacturing Incentives in New Mexico", a study completed in response to HM 37 from the second session of the forty-eighth legislature, which reviews existing tax credits and other incentives for their effectiveness in attracting or keeping manufacturing businesses in the state. There is a comprehensive discussion of the tax credits that are currently in effect at the beginning of the report. There are also charts that describe the components of each incentive, such as the existence of "carry-forward" language, refundability, transferability, the provisions for recapture, the use in conjunction with other tax incentives (double-dipping), the cap to credits claimed or the review that is required. These are all components that should be consciously considered when drafting a tax incentive and adopted or discarded and not simply ignored.

Tax Credit for Small In-State Businesses

Representative Arnold-Jones spoke about a bill she was proposing for the committee to endorse and for introduction in the 2009 legislative session regarding a general tax credit for all small businesses in New Mexico. The bill will be sent to committee members for review prior to the next meeting of the committee.

Health Care Providers Gross Receipts Tax Provisions

Linda Sechovec, lobbyist, New Mexico Health Care Association, and Mr. Nunns discussed the various existing gross receipts tax provisions that affect health care providers in New Mexico. Ms. Sechovec discussed the provisions that affect nursing homes. She noted that 26 percent of nursing homes are nonprofit facilities and 74 percent are proprietary, for-profit businesses. She noted that Medicare does not cover gross receipts taxes. Nursing homes in the state serve, on average, 3,640 persons daily. Out of \$166 million in revenue for the nursing home services provided to patients, 74 percent of the tax is paid by the federal government in Medicaid matching. Of the \$8.3 million in gross receipts that must be paid by these businesses, 74 percent, or about \$6 million, is paid by the federal government through Medicaid. For every \$0.26 paid in Medicaid by the state, an additional \$0.74 is returned to the state from the federal government's share of gross receipts taxes paid through Medicaid.

Mr. Nunns discussed a series of sections of the Tax Code that affect health care providers.

- Section 7-9-77.1 NMSA 1978 is a gross receipts deduction from Medicare payments, federal TRICARE program (U.S. Department of Defense medical).

Local Government Legislative Priorities

Ms. Young and Bill Fulginiti, executive director of the New Mexico Municipal League (NMML), presented their organizations' legislative priorities.

The NMAC would be requesting endorsements by the committee for the following proposals:

- a bill providing a \$6 million appropriation for CAMA software for county assessors to enable all counties to value property in a relatively uniform manner and have the information online to provide to the Property Tax Division of the TRD;
- a bill to alter the yield control formula; and
- a bill to disclose to residential property purchasers an estimate of the tax that will be due in the second year of ownership of newly purchased property.

The NMML had two bills that would be presented for endorsement:

- a bill to removed certain preconditions that inhibit local governments from imposing local capital outlay gross receipts taxes; and
- a bill to increase distributions to municipalities from the Law Enforcement Protection Fund.

Wellness in the Workplace Tax Credit

Jim Campbell discussed HB 148, from the second session of the forty-eighth legislature, which provided personal income tax and corporate income tax credits to employers that sponsored wellness programs for their employees.

Alcoholic Beverage Tax Issues

Attorney General Gary King and Phil Baca, assistant attorney general, discussed two proposals:

- increasing the liquor excise tax on "alcopops", which are flavored malt and other alcoholic beverages with relatively low alcohol content and geared to attract a young market that often includes minors; and
- authorizing a statewide local option liquor excise tax.

Adjournment

The committee adjourned at 4:15 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 9

December 2008
Agenda
Minutes

Revised: December 12, 2008

TENTATIVE AGENDA
for the
FIFTH MEETING IN 2008
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 15-16, 2008
State Capitol, Room 322
Santa Fe

Monday, December 15

- 9:00 a.m. **Call to Order**
 —Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Consensus Revenue Forecast**
 —Rick Homans, Secretary, Taxation and Revenue Department (TRD)
 —Katherine Miller, Secretary, Department of Finance and Administration
 —David Abbey, Director, Legislative Finance Committee
- 10:30 a.m. **Oil and Gas Revenue Distribution to State**
 —Jim Nunns, Tax Policy Director, TRD
- 11:15 a.m. **Lab Partnership with Small Business Tax Credit**
 —Mariann Johnston, Manager, Small Business Assistance Program, Los Alamos
 National Laboratory
 —Jackie Kerby Moore, Manager, Technology and Economic Development,
 Sandia National Laboratories
 —David Meuer, CEO, Armed Response Team
- 12:00 noon **Lunch**
- 1:30 p.m. **Quality Data for Better Tax Policy**
 —Tom Clifford, Research Director, New Mexico Tax Research Institute
 (NMTRI)
 —Beverlee McClure, Executive Director, Association of Commerce and Industry

- 2:30 p.m. **Severance Tax Permanent Fund Revenue Trends**
—Olivia Padilla-Jackson, Director, State Board of Finance
—Gary Bland, State Investment Officer, State Investment Office
- 3:30 p.m. **Yield Control Formula Changes**
—Jim O'Neill, Consultant, New Mexico Association of Counties
—Tom Clifford, Research Director, NMTRI
- 4:45 p.m. **Chile Producers Tax Credit**
—Charlie Marquez, Lobbyist, New Mexico Chile Association
- 5:45 p.m. **Recess**

Tuesday, December 16

- 9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. **Tax Expenditure Budgeting**
—Thomas Pogue, Professor Emeritus of Economics, University of Iowa
- 10:15 a.m. **Telecommunications Update**
—Loretta A. Armenta, President, Qwest-New Mexico
—Leo Baca, Government Affairs Director, Qwest
—Roman Maes, Lobbyist, Qwest
- 11:00 a.m. **Legislative Proposal Endorsements**
—Pam Ray, Staff Attorney, Legislative Council Service
- 11:30 a.m. **Educational System Support for Economic Development**
—Fred Mondragon, Secretary of Economic Development
- 12:00 noon **Working Lunch**
- 12:30 p.m. **Legislative Proposal Endorsements — Continued**
—Staff
- 1:30 p.m. **Military Retiree Incentive — Tax Exemption**
—Joe Cantergiani, Legislative Liaison, Military Officers Association
- 2:30 p.m. **Adjourn**

**MINUTES
of the
SEVENTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**December 15-16, 2008
Room 322, State Capitol
Santa Fe**

The seventh meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:30 a.m. at the State Capitol in Room 322 in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Sen. Sue Wilson Beffort (12/15)
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra

Absent

Sen. Kent L. Cravens
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Sen. H. Diane Snyder

Rep. Janice E. Arnold-Jones
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubestic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. John Peña
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

Guests Legislators

Sen. Rod Adair (12/15)

Sen. Howie C. Morales

Rep. Debbie A. Rodella

Rep. Luciano "Lucky" Varela

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)

Doris Faust, Staff Attorney, LCS

Tim Crawford, Historian, LCS

Tom Pollard, Economist, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, December 15***Consensus Revenue Forecast***

Katherine Miller, secretary of finance and administration, Rick Homans, secretary of taxation and revenue, and David Abbey, director, Legislative Finance Committee (LFC), presented the consensus revenue forecast completed in the first week of December.

Secretary Miller began with an overview of the present economic conditions, which appear to be grim, but not as grim as in other states. The national economy is seeing reduced revenues due to lower oil and gas prices as well as the national economic crisis. Other states are severely affected by the collapse of the housing bubble. The 40% decline in value of shares on the New York Stock Exchange and the \$700 billion federal financial institutions bailout are rippling throughout every state's economy. It was noted that the country has been in a recession since December 2007. Economists are predicting at least four quarters of negative growth from third quarter 2008. An additional federal bailout for states is proposed in the amount of \$500 billion to \$700 billion, and this might help to relieve some of the decline in revenue for the states.

Oil and gas prices have taken a nosedive since July 2008. The December 2007 estimate for oil was \$75.00 per barrel. In July 2008, the price of New Mexico crude oil rose to \$143.30 per barrel. By August, the estimate was \$122 per barrel, but now the estimate has dropped to \$59.00 per barrel. The cost of New Mexico crude was \$37.35 per barrel on December 5, 2008. New Mexico natural gas was anticipated to average \$6.60 per million cubic feet (mcf), but spiked to \$12.31 per mcf in June 2008 and was down to \$3.00 per mcf in October 2008. The price of natural gas per mcf is now up around \$5.30 per mcf. Secretary Miller noted that it is difficult to say if the bottom prices in the oil and gas markets have been reached or if prices will

fall further. To maintain 10% reserves, it is necessary to receive \$385 million in revenue. The governor has asked for each agency to submit a list of where and how much the agency's budget can be cut. It appears that \$384.4 million will need to be cut from the budget to retain 10% reserves for fiscal year 2009. Nationally, jobs have been steadily lost over the last 11 months, and the consumer price index is falling.

Secretary Homans gave a fiscal year 2008 revenue update. He stated that general fund revenues will most likely come in at about \$92.5 million above the December 2007 forecast. Broad-based taxes and investment income will show weakness but will be balanced by the strength of severance revenues. Gross receipts will come in at approximately \$1.9 million, which is \$64,700 below the December 2007 estimate. Selective excise taxes will be down about \$11,000. Personal and corporate income taxes combined will be about \$14,000 above the December 2007 projections. Mineral production taxes, federal mineral leasing and State Land Office income will be \$139,800 above December 2007 projections. Investment income will come in \$23,300 below the December 2007 numbers. All other sources of revenue are expected to bring in \$37,800 above the December 2008 estimate. Expected revenues will be \$6.04 million. The main concern right now is that there is likely to be slower growth in most taxes than was forecast, but some growth nonetheless. It is clear that fiscal year 2009 budgets will need to be adjusted downward to balance the state's budget and rebuild the reserves.

New Mexico saw employment *growth* in fiscal year 2008. Employment was 3% above fiscal year 2007. Those figures indicate New Mexico is somewhat behind the nation in job loss. New Mexico's unemployment insurance claims are lagging behind the national trend. Secretary Miller suggested that New Mexico's residential foreclosure rate has not risen as quickly as in many other states. Reserves as the state entered fiscal year 2009 were at 12.6%. It appears that oil and gas prices peaked in October 2008 and now are sliding quickly.

Mr. Abbey noted that the legislature has no authority to use the \$454 million from reserves. It is critical that the legislature provide the authority necessary to move money out of reserves for use to cover the shortfall of revenue that is expected. Mr. Abbey is suggesting a three-pronged approach to plugging the shortfall:

1. increase the revenue to the general fund by bringing in additional revenue;
2. cut appropriations; and
3. de-authorize stalled capital outlay projects.

He noted that federal fiscal relief from stimulus funds will not be available for state use until after fiscal year 2010 begins on July 1, 2009. To maintain 10% reserves, \$384 million will be needed in fiscal year 2010. The shortfall is actually \$454 million, and the stimulus money will be around \$30 million.

Committee members noted that:

- corporate liquidity is poor, and the fourth quarter estimated corporate income tax (CIT) payments would most likely be down from the projected revenue level;

- the magnitude of the current economic downturn has not been experienced in 30 to 50 years, and it possibly will prove to be the worst drop in a century;
- the price of metals and other extractive commodities will remain low for the foreseeable future, including oil and gas prices; and
- mining jobs are now decreasing.

So far, the credit worthiness of the state is solid, according to Secretary Miller. She noted that the legislature and the executive branch will have to work together to identify where budgets can be cut and to replace or retain the tax stabilization reserve. Noting that prior requirements for reserves were half the current perceived need, the committee discussed the need to maintain at least 10% reserves. Nothing was definitively agreed upon, but due to the unpredictability in the current revenue outlook, the committee thought it more prudent to maintain a higher level of reserves. It was noted that higher reserves may be extremely necessary in the near future to provide operational money for the state. It was also noted that most forecasts still are predicting the revenue outlook will improve and that this may be only wishful thinking. It would be most prudent to set budgets below the targets assumed in the forecast to accommodate any further slippage in the revenue.

The committee further noted that CIT estimated payments would come in earlier if the legislature were to adopt a fourth quarter reporting date. Corporations have had a three-period reporting schedule since 2003 that was adopted in spite of the error, and now, with the addition of a fourth-reporting date, money will come in more quickly and before the first quarterly report in April. In response to a committee question, Secretary Miller also noted that state employee health care costs increased by 8% and will cost the state an additional \$7.5 million to \$8 million. Her department and the General Services Department are working together to identify ways to decrease costs. There was a \$45 million increase in the budget from fiscal year 2007 to fiscal year 2008, and now the state has to reduce expenditures even below that point. It will be difficult to make cuts in programs such as public safety, health care and education. Pit rules were identified by some members of the committee as creating an atmosphere in which oil and gas developers were encouraged to leave the state. Governor Richardson's Investment Partnership (GRIP) is reflecting a \$400 million shortfall in needed revenue to complete projects.

Oil and Gas Revenue Distribution in the State

Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), noted that in spite of the recent price declines, the production price of oil and gas is still relatively high. Production is projected to decline in the future, and natural gas will show a greater decrease in production than oil over the same short-term forecast period. As a percent of general fund revenue, oil and gas revenue will be lower than it has been in the last three years, but it should still be higher than in the years preceding that three-year period. New Mexico is the fifth-highest oil producer and the sixth-highest natural gas producer in the nation. New Mexico has the eighth-highest royalty rates out of the nine greatest oil and gas producing states.

Lab Partnership with Small Business Tax Credit

Mariann Johnston, manager, Small Business Assistance Program, Los Alamos National Laboratory (LANL), and Jackie Kerby Moor, manager, technology and economic development,

Sandia National Laboratories, presented an update on the laboratory partnership with small business tax credit. David Meurer, owner of a small business working in the program with the labs, was scheduled to speak, but he was unable to do so due to the weather. No data handouts were presented.

The lab partnership program promotes economic development in the state through cooperative efforts of the national laboratories working with small businesses to resolve technological problems, develop technologies and leverage money from the labs to provide other needed technical assistance.

The program has increased its capacity from eight projects in 2008 to 12 in 2009. LANL began its program in 2007. It worked in 22 counties in New Mexico. In 2008, the funds were divided between Sandia and LANL, with Sandia receiving \$2.4 million and LANL \$1 million. Projects are being sought in Guadalupe and Quay counties to provide the first projects for those counties. Projects vary in character from bovine waste mitigation, algae biofuels using lipids or oil content of the algae, watershed management in which irrigation flow systems are analyzed, electrical power usage for the community of Santa Teresa and solar-powered security systems for small businesses.

Quality Data for Better Tax Policy

The presenters of this topic were Beverlee McClure, Ph.D., director, Association of Commerce and Industry; Richard Anklam, president and executive director, New Mexico Tax Research Institute (NMTRI); Tom Clifford, Ph.D., research director, NMTRI; and Jim O'Neill, consultant.

Mr. Clifford began by noting that sound data are necessary for all governments to make sound decisions. Reporting of data provides accountability and a means to measure success. Good data also promote better revenue tracking and more accurate forecasting. As made more apparent by the efforts to enact combined reporting, there is a lack of information needed to assess the value of making such a change from the current CIT system allowing businesses to choose unitary, combined or consolidated reporting, whichever fits their business model. The state cannot develop the resources and staff time needed to gather adequate information to allow for collection of the data needed for the legislative session. Reporting should be monthly. Data for effective use of funds distributed, such as distributions of \$2 billion or more annually from the road fund, need to be accessible for legislators and staff to determine the effectiveness of the distribution. Use of property taxes also is not fully reported. In addition, there is a lack of external input for economists, and analyses are many times completed in isolation. Dynamic scoring could still be developed in a useful manner and would help provide models for tax incentives and other tax expenditures. Among the things that cannot be fully analyzed due to lack of data are:

- pyramiding;
- streamlined sales tax;
- corporate income reporting;
- competitiveness of the tax system in New Mexico with other states; and

- local government revenue adequacy.

Additional resources are needed to provide web-based dissemination of data, to review and document the accuracy of the data gathered and to provide accurate economic analyses and periodic reports. An office of financial accountability is needed to pull together information for oversight of agencies and expenditure of funds that is independent of the process to create fiscal impact reports and revenue estimates. Mr. Clifford suggested that the LCS be the data collection agency and receive an appropriation determined by the legislature on an annual basis. He suggested that a business tax advisory committee be created by memorial and that an office of fiscal accountability be created by statute. The office would seek the best tax policy for the state and look at how to rebuild and maintain the needed tax base for the state. It would be necessary to build the credibility of the data collected. He noted that the elimination of the gross receipts tax on food narrowed the base considerably.

The committee noted that:

- the Department of Finance and Administration (DFA) stopped publishing a general fund report, which was the result of not having adequate staffing, such as an economist, on board and the beginning of accrual accounting, which required intensive staff time to get up and running;
- businesses need a tax environment that is clear and laws and regulations that are easily understood;
- near-term goals for data collection need to be set so that the legislature can move beyond talking about data collection to implementing a plan that results in data collection;
- a web site for public scrutiny of data should be available;
- appropriation of nonrecurring funds would allow the legislature to review and oversee the distribution of money for effectiveness and need;
- the TRD and NMTRI should be in close communication;
- there should be a monthly distribution (or web availability) of tax distributions and other tax revenue distribution reports and an annual report from each agency;
- money needs to be made available to establish a workable web site; and
- there would be an additional burden on the TRD to aggregate data.

Severance Tax Permanent Fund Revenue Trends

Olivia Padilla-Jackson, director, State Board of Finance, ran through the sequence of events that occurs when severance tax bonds (STBs) are issued and the proceeds distributed. She noted that both senior and supplemental bonds are issued and in June, STBs are sold. The size of the issue depends on the magnitude of the revenue from severance taxes collected by the state. If \$100 million comes into the Severance Tax Bonding Fund, \$95 million will be made available for debt service and \$5 million will be distributed to the Severance Tax Permanent Fund. If the revenue is declining, there will not be enough money to use 95% of the fund to cover new STBs. In this climate, less will be placed in the Severance Tax Permanent Fund, and all of the money will be used for debt service. In fiscal year 2008, \$600 million was placed in the Severance Tax Bonding Fund. This was the highest amount ever set aside for bonding. The money not held to pay debt service is "sponged", or invested in short-term or overnight securities

to generate more cash.

State Investment Officer Gary Bland noted that market values of the Severance Tax Bonding Fund are determined based on a five-year rolling average from the money in the fund on December 31 of each year. To date, he has seen a 27.5% decline in fund performance. He predicted that the market would rebound within 18 months. He said film programs generated at least \$1 million per year and 4,100 full-time employment jobs, such as electrical workers and other professions.

Yield Control Formula Changes

Mr. O'Neill and Mr. Clifford spoke about property tax shifting and yield control. Mr. Clifford noted that:

- yield control guarantees that local revenue will increase by 5% annually;
- the 3% annual limit on residential property value increases;
- the yield control target is not reduced in response to the reduced residential values due to the 3% limitation; and
- the money lost to the limitation must be made up by other taxpayers, non-residents and purchasers of new construction or newly purchased residential property.

Mr. Clifford suggested two options to reduce the disparities between long-term homeowners and purchasers of new construction or existing housing and to reduce or eliminate tax burden shifting to those whose properties are not covered by the 3% limit:

- 1) repeal the 3% limit completely, and value all homes at current and correct values, although this option may require a constitutional amendment; and
- 2) limit the value of all homes, including those that are re-sold, and new construction.

As a partial solution to the tax shifting, Mr. Clifford suggested:

- retaining the difference in assessed value between existing and newly purchased homes; and
- equalizing the rate of assessed value growth with the rate of revenue growth allowed in yield control by:
 - ◆ raising the allowed growth of assessed value from 3% to the yield control rate of 5%; and
 - ◆ lowering the growth rate in yield control to 3%.

The potential fiscal impact of eliminating the 3% value limit would cause:

- an immediate large increase in property values for 60% of residential property owners and therefore an increase in the total assessed values in a county;
- yield control to adjust rates downward so that total revenue is unchanged;
- debt service rates to adjust downward; and

- households whose current assessed value/correct value is below average to see a net tax increase and those with residential values that are high due to a change in property ownership since 2001 to see a decrease in property tax values.

The potential fiscal impact of limiting all values would cause:

- reduction in growth of assessed values over time;
- yield control to adjust the rates so that revenue remains the same with the anticipated 5% increase;
- debt service rates to adjust upward and new debt capacity to grow, but at a slower rate; and
- new construction and transferred values to be artificially kept down.

The potential fiscal impact of raising the value limit to 5% would cause:

- assessed value to grow more quickly;
- reduced tax rates so that revenue is unaffected; and
- debt service rates to adjust downward and new debt capacity to increase.

The potential fiscal impact of reducing the yield control increase to 3% would cause revenue growth rates to be reduced and debt service to be unaffected.

A bill draft presented by Mr. O'Neill would amend Section 7-37-7.1 NMSA 1978 to replace the growth control factor, which is used to limit the amount of revenue growth from one year to the next. The new formula would adjust the tax rate directly using an inflation factor. The handout in the meeting file contains more details of the formula.

Chile Producers Tax Credit

Charles Marquez presented information from the New Mexico Chile Association. The association is concerned that the number of acres of chile production in New Mexico is decreasing, from 37,000 acres in 1993 to 11,000 acres in 2007. High labor costs and an insufficient supply of labor appear to be part of the reason that acreage is decreasing. Higher production per acre also has caused reduction in acreage. Mechanical harvesters are being tested in the state, and newer varieties of chile that can be mechanically harvested are being developed at New Mexico State University. Mr. Marquez requested that the legislature consider providing a tax incentive in the form of tax credits for chile growers to attract more growers back into chile production. His goal is to increase the number of acres of green chile produced in New Mexico while keeping New Mexico as the chile-growing capital of the nation.

The committee recessed at 4:30 p.m.

Tuesday, December 16

The meeting was reconvened at 9:30 a.m. by Representative Sandoval.

Tax Expenditure Budgeting

Dr. Thomas Pogue, professor emeritus of economics, University of Iowa, presented a report he compiled for the TRD on tax expenditure budgeting. The study provides information that will help the executive and legislative branches evaluate tax expenditures. It is a component of the department's ongoing effort to analyze New Mexico's tax structure and to help inform tax policy decision-making.

Dr. Pogue began with an overview of the concept of tax expenditures. He noted that a tax expenditure occurs when tax policy is used to pursue social or other objectives not specifically limited to revenue generation by altering provisions of the tax code rather than using other instruments such as direct spending, regulation, loans or grants. Tax expenditures take the form of tax preferences that are directed at targeted actions or recipients, i.e., taxes are lowered for taxpayers who meet specific criteria. The TRD administers the tax expenditure, and the parameters of the expenditure are set out in law in the tax code. Essentially, revenue that would have been raised by a tax is not generated, giving a benefit to the qualified taxpayer. The state's tax revenue is reduced as a result, and the state should derive a benefit in increased production or an activity that will improve society. Tax credits are tax expenditures.

It is necessary to establish the baseline tax system, then expenditures can be measured against the baseline. Tax expenditures can be estimated but cannot be exactly determined. The estimates can be used to evaluate and control the magnitude of tax expenditure use and to compare the relative effectiveness of tax expenditure programs with other policy instruments. A tax expenditure budget is a set of estimates of a government's tax expenditures and can provide data to:

- support specific activities that are replacing direct expenditures;
- show revenue allocated to specified desired results of the tax expenditures; and
- aid in decision-making about taxes and spending.

Page 19 of the handout in the meeting file provides details on how to create a tax expenditure budget. Evaluation of tax expenditures entails determining how the tax expenditure changes the economic outcome, including resource allocation and income distribution, and whether the changed outcome is an improvement over what would have occurred in the absence of the tax expenditure. The evaluation should determine whether the tax expenditure has brought about the best possible outcome. Changes made in response to a tax expenditure, such as increased purchase of health insurance due to a tax credit for purchase of health insurance, and changes that follow from the loss of the revenue that is not received due to the tax expenditure, such as increases in other taxes necessary to generate the needed revenue, result in borrowing increases or spending decreases. These changes would have indirect effects that must be determined and measured, although these are far more speculative, and direct effects are relied upon to provide the main evaluation of the tax expenditure. Questions that need to be answered include the following:

- Is the additional production more valuable than the private sector and/or government production that is necessarily foregone?

- Is the redistribution of income fair or otherwise appropriate?

Simply increasing the level of activity is not a positive outcome unless production also increases and substantial benefits to the state are realized. Government activities should be decreased as a result of the tax expenditure, or the production should increase the total amount of taxes generated in excess of the value of the tax expenditure. If neither condition is met, the state will be worse off than without the tax expenditure.

Data to evaluate tax expenditures are difficult to obtain. Comparison of the tax expenditure as a mechanism to obtain a result should always be made with other policy instruments that would achieve the same objective.

Advantages of tax expenditures over direct expenditures are that tax expenditures are more likely to cause changes in private behavior and respond more readily to changing activity levels and economic conditions.

Disadvantages of tax expenditures when compared to direct expenditures are that tax expenditures:

- may continue indefinitely, when not beneficial, if there is no sunset date affixed to the expenditure and if the tax expenditure is not reviewed periodically;
- do not receive year-to-year oversight and fine tuning;
- do not allow for the flexibility of direct expenditures;
- do not provide for public needs such as defense, law enforcement, a judicial system, etc.; and
- can add to the complexity of a tax system.

Also, data collection is difficult and many times inaccurate due to faulty estimating.

Telecommunications Update

Leo Baca, government affairs director, Qwest, and Roman Maes, lobbyist, Qwest, apologized that Loretta A. Armenta, president, Qwest-New Mexico, was unable to attend the meeting. Mr. Baca discussed Qwest's investment in New Mexico and noted that the employee base in New Mexico has decreased. Qwest continues to have concerns about regulations adopted by the Public Regulation Commission that inhibit Qwest's ability to compete with unregulated telephonic signal carriers. Qwest is now challenging a special tariff and is seeking to do away with regulations that put Qwest at a competitive disadvantage with unregulated carriers. Qwest will present legislation in the upcoming session, and Mr. Baca and Mr. Maes informed the committee about the proposed legislation. Mr. Maes discussed the loss of employees, now at 800 from a high of 2,000 in 1985. In addition, he mentioned that Qwest is losing lines each month to cellular carriers — about 5,000 per month, or a total of 60,000 fewer customers in 2008.

The proposed legislation would allow Qwest greater flexibility and faster response to market changes. Promotions, discounts and special rates or bundling would be allowed on short notice without hearings to allow Qwest to operate in the market to attract customers.

Legislative Endorsements

A total of 43 bills were heard throughout the interim. Several were eliminated prior to review for various reasons. Twenty-three bills were endorsed. The chart showing endorsed and not-endorsed bills is attached.

Educational System Support for Economic Development

Secretary of Economic Development Fred Mondragon presented information to the committee regarding work force needs of businesses in New Mexico. It was noted that jobs increasing in the economy are high tech jobs, which require special skills and abilities that are not easily obtained with only a public school education. In addition to Secretary Mondragon, Melissa Lomax, Public Education Department, and Bill Flores, Higher Education Department, were present to discuss the programs offered in their sectors of the educational system that prepare young people for jobs in New Mexico.

Programs that are keeping high school students engaged in their education include the dual-credit classes, where a student can attend a two- or four-year educational institution while still in high school and obtain college credit, and also programs developed specifically to produce trained members of the work force for specific jobs in the community. Students may be exposed to college course work as early as eighth grade.

Military Retiree Incentive — Tax Exemption

Joe Cantergiani, legislative liaison, Military Officers Association, spoke about the benefits of attracting retired military officers to New Mexico. He proposed that the legislature consider adopting a tax deduction from military retiree pay or an exemption for all military pay. Such a benefit would encourage more retired military officers to retire in New Mexico and provide the state with a skilled and knowledgeable work force from which to draw.

Adjournment

The committee adjourned at 1:39 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 10

2008
Legislation Reviewed
and
Committee Endorsements

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

Draft #	Title	Agency	202 #	Fiscal Impact	Sponsor	Summary
1	Driver's License Renewal at 21	MVD	.174559.1SA	Revenue neutral	Endorsed Rep. [REDACTED]	Requiring expiration of driver's license at age 21, e-renewal
2	Commercial Driver's License Changes	MVD	.174561.1SA	Revenue neutral	Endorsed Sen. Phil Griego	Definition changes, penalty changes, reporting changes
3	Vehicle Registration Alternative Methods	MVD	.174562.1SA	Road Fund hit \$4-5M	Not Endorsed Rep. Tom Taylor	\$5.00 discount on alternative means of vehicle reg, not mail
4	PIT Simplification GR	TRD	.174438.3GR	FY09 flat revenue, FY10-11 revenue increase, after FY11 revenue decreases	Endorsed Rep. Sandoval	Simplifies PIT by creating a new tax credit that replaces the standard deduction, personal exemptions and the low- and middle-income exemption, tax rates and LICTR

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

5	TAA Electronic Payment	TRD	.174563.1SA	Revenue neutral	<u>Endorsed</u> Rep. Sandoval	Expands electronic payment of tax for large taxpayers over three years, increases the CRS filing threshold, allows delay of interest in disasters, cleans up TAA
6	TAA Confidentiality	TRD	.174565.1SA	Revenue neutral	<u>Endorsed</u> Rep. Sandoval	Adds new definitions and general rules, splits current exceptions into groups of related exceptions, modifies penalty provision
7	Estimated Payments and Withholding GR	TRD	.174566.4GR	Increases revenue by \$65 million in first year	<u>Endorsed</u> Speaker Lujan	Restores first quarterly CIT estimated payment, provides for withholding on payments for film performing artists, extends PTE and O&G proceeds withholding to residents

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
 LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
 DECEMBER 15-16, 2008

8	Cigarette and Tobacco Tax Changes	TRD	.174567.1SA	Revenue neutral	<u>Endorsed</u> Sen. Morales	Conforms certain definitions to the Master Settlement Agreement, administrative changes and language cleanup
9	TIDD Technical Changes	TRD	.174568.2SA	Revenue neutral	<u>Endorsed</u> Sen. Bernadette Sanchez	Changes GRT increment calculation to conform to tax reporting, correct an omission and specify process for making estimates; adds rules for distributing GRT increment reserves for district purposes

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008



10	TRD Act Update	TRD	.174462.1SA	Revenue neutral	Endorsed Rep. Tom Taylor	Adds Tax Fraud Investigations Division to list of TRD divisions, authorizes NM to enter the State Income Tax Levy Program, earmarks fees received due to the SITL Program
11	Unclaimed Property Recovery Fee Limit	TRD	.174570.1SA	Revenue neutral	Endorsed Rep. Crook	Caps fees that can be claimed at 10% of the recovery
12	Refund Anticipation Loan Licensing	TRD			Not Endorsed Rep. Rodella	
13	Computer Assisted Mass Appraisal (CAMA) System Appropriation	NMAC	.174574.1	Negative revenue impact \$6M	No Action Rep. Gonzales	


REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

14	Property Tax Estimate Disclosure	NMAC	.174577.1	County assessor, possible costs	Not Endorsed Rep. Sandoval	Requires disclosure of probable property taxes by seller, Realtor, broker or title company
15	Property Tax Estimate Disclosure	Realtor's Association	.174581.1	County assessor, possible costs	Not Endorsed Sen. Duran	Requires disclosure of probable property taxes by seller, assessor provides "property tax declaration document"
16	Apportionment of Business Income and Investment Tax Credit Sunset Extension	Intel	.174185.1	Revenue neutral	Endorsed Speaker Lujan	Extends sunset to 2020 for investment tax credit and double weighted tax provisions
17	Research & Development Tax Credit Sunset Extension	EDD	.174442.1SA	Revenue neutral	Endorsed Sen. Bernadette Sanchez	Extends sunset on research and development small business tax credit to 2013


REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

18	Capital Outlay Local Option Tax — Remove Preconditions	New Mexico Municipal League	.174578.1	Local revenue positive	<u>Endorsed</u> Rep. Gonzales	Eliminate requirement to enact general GRT increments before capital outlay local GRT can be enacted
19	Gaming Control Act Changes	GCB	.174469.1SA	Revenue neutral	<u>Endorsed</u> Sen. Phil Griego	Defines "cheating", includes self-exclusion provision, crime and penalty, provides for emergency reduction of horse racing days without effect on gaming operator license

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

20	Bingo and Raffle Act Reorganization	GCB	.174582.1SA	Positive revenue impact	 <u>Endorsed</u> Sen. Phil Griego	Reorganizes and updates the Bingo and Raffle Act, now called the NM Bingo and Raffle Act, establishes licensing procedures, keeps regulation by the GCB, tax paid is .5% of the gross receipts of the game operated
21	Preprosecution Diversion	GCB	.173569.1SA	No revenue impact	<u>Endorsed</u> Sen. Phil Griego	Memorial: encourages DAs to consider preprosecution diversion programs for compulsive gamblers with no other crimes

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

22	Gaming Tax Graduated for Smaller Gaming Income Tracks	Ruidoso Downs	.174584.1	Negative revenue impact	 <u>Endorsed</u> Rep. Sandoval	Reduces gaming tax paid by racetracks that have net takes of less than \$14M in the prior year to 10% from 26% until the track exceeds \$10M in the taxable year, then tax is increased for remainder of year to 26%
23	Municipal Environmental Services GRT	Ruidoso	.174805.1	Municipalities revenue increase	<u>Endorsed</u> Sen. Jennings	Increases the total municipal environmental services GRT that may be imposed from 1/16% to 1%, lower impositions must be in 1/16% increments

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

24	Alcopops	AGO	.174280.2SA	Revenue increase, dedicated	Endorsed Rep. Varela	Changes the tax on flavored malt beverages from rate on beer (\$.41/gal) to rate on spirits (\$1.60/liter)
25	Direct Shipment of Wine Permit Process	NM Wine Industry	.174230.1	Revenue positive	Endorsed Rep. Sandoval or Rep. Irwin	Sets up a permitting system for wineries that choose to sell wine directly to consumers in NM, limit 24 cases of nine liters, imposes GRT and liquor excise tax on shipments
26	County Health Care Gross Receipts Tax Sunset	Bernalillo County	.174044.1	Revenue neutral	Endorsed Rep. Sandoval, Rep. Miera	Permits the governing body of a county to impose the 1/16% county health care GRT for additional five-year terms

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE ENDORSEMENTS FOR 2009 LEGISLATIVE SESSION
DECEMBER 15-16, 2008

27	County Correctional Facility Local GRT	Bernalillo County	.174045.1	Local rSevenue positive	Endorsed Sen. Martinez	Allows Bernalillo county to impose a county emergency GRT of 3/8% for a definite, but unrestricted, period, allows tax renewal upon expiration, class A county must dedicate revenue to detention center operation, Sec. 2 allows counties to impose up to 1/4% county correctional facility GRT in 1/16% increments for capital expenses of detention center or correctional facility
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